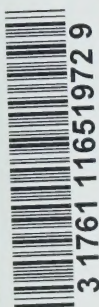
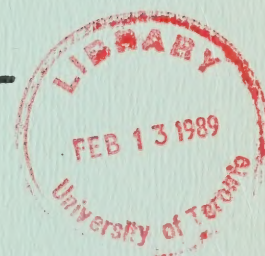


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ENVIRONMENTAL ASSESSMENT BOARD



VOLUME: 64

DATE: Tuesday, January 31st, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member


A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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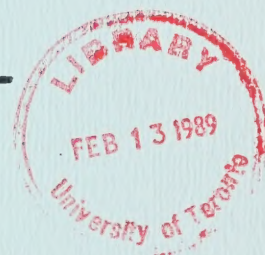
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, January 31st,
1989, commencing at 9:30 a.m.

VOLUME 64

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
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	LABOUR
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	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.) MR. B. BABCOCK)	RED LAKE-EAR FALLS JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL) MR. S.M. MAKUCH)	GREAT LAKES FOREST
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
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MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
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MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>WILLIAM JOHN STRAIGHT,</u>	
<u>R. DAVID SCOTT,</u>	
<u>PETER J. McNAMEE, Resumed</u>	10786
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Cross-Examination by Ms. Swenarchuk	10876

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
385	Hand-drawn diagram of an example of a rule of change.	10728
386	Hand-drawn diagram of actual model.	10734
387	Document entitled: Class EA for Timber Management and Timber Management Planning.	10826
388	Interrogatories as follows: NOTOA No. 26; Nishawbe-Aski No. 13; OFIA No. 4 and 6; MOE Nos. 4, 8 and 15.	10905
389	Letter dated December, 1986 from the Federation of Ontario Naturalists.	10954

1 ---Upon commencing at 9:35 a.m.

2 THE CHAIRMAN: Thank you ladies and
3 gentlemen. Good morning. Mr. Cosman, are you ready to
4 proceed?

5 MR. COSMAN: Thank you, Mr. Chairman.

6 WILLIAM JOHN STRAIGHT,
7 R. DAVID SCOTT,
PETER J. McNAMEE, Resumed

8 CROSS-EXAMINATION BY MR. COSMAN:

9 Q. For Mr. Straight and Mr. Scott. Mr.
10 Straight, Mr. Freidin explored with you yesterday what
11 a tradeoff was and you explained that tradeoffs were
12 necessary where values conflicted and there's no way to
13 provide protection to both. Is that a fair summary of
14 what you said?

15 MR. STRAIGHT: A. I believe so.

16 Q. Yes. In a utopian world, of course,
17 it is not necessary to have any tradeoffs, everything
18 can be protected, but in the real world values do
19 conflict and hard decisions must be made. Is that
20 correct?

21 A. There are times when those kinds of
22 tradeoff decisions do require to be made, yes.

23 Q. For example, you may have the
24 situation where local anglers and hunters may want a
25 road access to a lake, the tourist operator who flies

1 his customer in from Minnesota doesn't want a road
2 access to the lake, there is a conflict between those
3 two users of the forest, and sometimes MNR must have to
4 weigh the different values and make a decision; is that
5 correct?

6 A. That's correct.

7 Q. Similarly, a fish biologist may want
8 reserves around not only important or major spawning
9 shoals but every minnow stream - not that Mr.
10 Campbell's biologist would ever be so unreasonable -
11 but that might happen, and if that were to happen and
12 if the result were to cause a sterilization of the forest
13 of a valuable amount of timber someone would have to
14 weigh whether or not those reserves should be
15 established or not?

16 A. I recognize what you are getting at
17 and, in general, I would agree with you. When you
18 bring it down to the question of a particular reserve,
19 normally the tradeoffs are not of that same level of
20 significance but, in general, I agree with what you are
21 saying, yes.

22 Q. The point is that there are occasions
23 when there are conflicts between values between users
24 of the forest and there are times when the MNR's
25 resource manager must weigh the values, must balance

1 the various values, and must make a decision as to what
2 particular value has to have precedence in a particular
3 situation.

4 A. That's correct.

5 Q. Now, you understand that
6 socio-economic aspects of the environment are protected
7 and must be protected as well as certain aspects of the
8 natural environment?

9 A. Yes.

10 Q. Are socio-economic impacts considered
11 by the Ministry of Natural Resources as part of their
12 decision-making function?

13 A. Yes, I would say they are.

14 Q. Now, Mr. Pyzer gave an example when
15 he testified about two cold water lakes where there
16 might be a prescription in place as to reserves which
17 would prevent, because of the proximity of the lakes
18 one to the other, a road from passing between those
19 lakes if the prescription were applied rigidly.

20 And he indicated that he himself, as
21 district manager, would have to make the difficult
22 decision in a particular case that might present itself
23 as to whether to protect perhaps a community of fish
24 which may or may not be significant or a community of
25 people which may be affected by the impact of

1 preventing that road from accessing a valuable timber
2 resource and that is a decision that, he as a resource
3 manager, would have to make.

4 Are there similar kinds of decisions that
5 resource managers have to make where values are in
6 conflict but similar to the one I just presented as an
7 example and Mr. Pyzer gave as an example?

8 A. There are situations similar to the
9 one you describe where district managers have to make
10 those kinds of decisions, yes.

11 Q. And in making those decisions,
12 sometimes a decision might be made that a community of
13 people is more important than a community of fish. I
14 realize you are a wildlife biologist and a fish
15 biologist yourself, but sometimes that hard decision is
16 made.

17 A. What you are describing is, I guess,
18 potentially a situation which may exist. I would also
19 qualify that by saying that most times we don't get
20 ourselves into those total win or total lose kinds of
21 situation.

22 Q. Certainly --

23 A. Even from -- both from a biological
24 and a socio-economic perspective.

25 Q. You certainly attempt to avoid that

1 kind of clear conflict?

2 A. Yes.

3 Q. Now, but there are times when there
4 may be a conflict and am I not right that fish values,
5 for example, don't have precedence automatically over
6 timber values in any particular situation?

7 A. I would say there is no automatic
8 preference.

9 Q. And there shouldn't be, should there,
10 it is a question of balancing the values depending upon
11 the particular situation that presents itself?

12 A. Yes, I believe that's correct.

13 Q. And just to come back to the person
14 who must make the decision when those conflicts do
15 present themselves, I understand - and you can correct
16 me if I'm wrong - but I understand that the person at
17 the MNR perhaps on the front line of that who must
18 weigh the conflicting values and make the decisions is
19 the district manager, something that you have done
20 yourself in Wawa?

21 A. The district manager working with his
22 team management, his management planning team would
23 make recommendations essentially to his regional
24 director and to the Director of Timber Sales in the
25 case of timber management planning to approve the final

1 plan.

2 Q. And you will agree with me that it
3 would be inappropriate for that district manager to
4 delegate that authority to a biologist, for example,
5 who may not appreciate the larger environmental
6 picture?

7 A. Those -- yes.

8 Q. All right. This brings me to the
9 guidelines themselves. Now, I understand there will be
10 persons to follow you to whom questions may be posed
11 with respect to the specific guidelines, but I have
12 some more general questions for you in the context of
13 resource management planning.

14 Mr. Straight, in referring to the
15 guidelines you made what seemed to me to be an
16 important distinction between the use of the guidelines
17 which you indicate as mandatory, and the degree of
18 flexibility that there must be in the guidelines
19 themselves.

20 A. Yes.

21 Q. You indicated that you require the
22 guidelines to be applied but the guidelines are what
23 that word denotes; that is, they are not regulation
24 cast in stone that people should apply as law but
25 rather they should be guides to your managers to assist

1 them in the exercise of their professional judgment?

2 A. I agree with that, recognizing that
3 as well the policies and the guide and -- the policies
4 that accompany the guidelines and the guidelines
5 themselves do provide that range, if you will, of
6 degree of flexibility, correct.

7 Q. And this is for good reason, isn't
8 it, because in applying professional judgment a
9 resource manager must at times weigh different values
10 and you can't have rigid rules that would, for example,
11 say that one particular value must have precedence over
12 those other values, there has got to be room for
13 flexibility in the decision-making.

14 At one particular time that community of
15 fish may be more important than a stand of timber; on
16 another occasion that particular fish resource may be
17 not as important as having access to a stand of timber?

18 A. That, as you describe, is part of the
19 equation. It certainly isn't all. Certainly there
20 will be relative weights or values associated with
21 different resource or environmental features.

22 The other part of the issue becomes one
23 of the professional having to make a judgment in his
24 assessment of effect and that judgment can be one of
25 minor impact to a major impact and one of perhaps even

1 an enhancement of a value.

2 I think, as Dr. McNamee described
3 yesterday in some depth, there is a reasonable degree
4 of uncertainty in much of that judgment process and so
5 it is not just a comparing of values, if you will, it
6 is also a judgment call on the side of the resource
7 experts that has to be involved in making those
8 decisions.

9 Q. And I think you used as an example
10 the judgment that may have to be exercised in
11 protecting a particularly valuable spawning shoal on
12 Lake of the Woods compared to a minnow stream?

13 A. That was a fairly obvious one. Some
14 of the more subtle types of judgment that may have to
15 be made would be the impact of a potential
16 sedimentation, for example, on not just fish habitat
17 but what impact that particular amount of sediment on a
18 spawning ground even perhaps may have at the population
19 level of a fish.

20 And you may be able to witness very
21 readily that there is indeed some infiltration of
22 sediment into a spawning bed, but that may or may not
23 be significant at the population level. And those are
24 the kinds of judgments that a professional biologist
25 would be called upon to make in a decision-making

1 process.

2 Q. All right. Because of the exercise
3 of judgment that is essential to the decision-making
4 process, do you agree with me that guidelines should
5 not be a disguised regulation of mandatory
6 prescriptions?

7 A. I don't know if I would agree with
8 that or not in the sense that there are regulations and
9 in the sense that the degree to which we can provide
10 direction which will assist in achieving consistency or
11 conformity with those regulations I would support
12 providing that kind of direction.

13 Q. I am not sure if I understood your
14 answer, but let me just ask Mr. Scott to see if he can
15 add to it.

16 Do you agree that guidelines should be
17 flexible because of the necessity of the Ministry of
18 Natural Resource managers exercising and applying
19 judgment in making their decisions.

20 MR. SCOTT: A. I believe the guidelines
21 should be somewhat flexible, but in my own opinion I
22 would like to qualify that because if we go back to
23 what Dr. McNamee said yesterday, where we have
24 guidelines and we want to evaluate those guidelines to
25 improve them and have that constant approval process,

1 if we just say we have guidelines but there completely
2 flexible and we throw it open, then we have no means to
3 evaluate and monitor what we have done.

4 So my approach is always to stick fairly
5 closely to the guidelines, in fact, almost always
6 within. There may be occasions where we want to
7 deviate, in which case we would flag that to the
8 district manager or regional director, et cetera, for
9 approval.

10 So, yes, guidelines should be flexible
11 and the word guidelines is truly that by definition,
12 but I think we should stick to them fairly closely.

13 Q. All right. With, as you said, the
14 qualification that there may be times when it is
15 necessary to deviate from them?

16 A. I would say those would be the far
17 exceptions because we have no means to evaluate those
18 guidelines and how they work unless we want to stick
19 closely to them.

20 Q. But you would agree that you must
21 provide for the ability to deviate if necessary in
22 those particular situations. For example, the two cold
23 water lake scenario that I posed as a hypothesis that
24 Mr. Pyzer earlier referred to?

25 A. Yes, I would agree with Mr. Straight,

1 that that is not exactly a full win/full loss
2 situation, but you are right, there would be some
3 degree of flexibility in those extreme situations but
4 we would again document and flag through the
5 decision-making process.

6 Q. All right. Now, in your witness
7 statement there was a reference to the revision of
8 guidelines and I believe it was in paragraph 10 of the
9 executive summary that there was a statement that the
10 Ministry was committed to testing the effectiveness of
11 guidelines and to revising them periodically. What is
12 the - and I can ask either of you - what is the process
13 now in place or contemplated for revision of the
14 provincial guidelines?

15 MR. STRAIGHT: A. Perhaps I can speak to
16 the process for revision and I will speak to it at this
17 point and try and keep it in a fairly general
18 perspective.

19 We have taken the work that Dr. McNamee
20 led us through in terms of the workshops, we have
21 identified those potential effects which we think are
22 most significant with respect to potential impact on
23 the environment for which the guidelines exist. We
24 have designed the monitoring program which we believe
25 deals with those significant effects.

1 I guess Dr. McNamee pointed out yesterday
2 as well, that in his context we are looking at in the
3 neighbourhood of ten years to be able to really get a
4 significant or an appreciable handle on the nature of
5 those effects just because of the relation -- just
6 because of the characteristics of the natural
7 environment that we are looking at.

8 In the case of tourism, the
9 characteristics of their businesses and in the
10 characteristics of the way in which timber management
11 itself occurs, you just don't go into an area and take
12 all the wood out and leave. It tends to be a very
13 carefully thought out process between access,
14 harvesting, follow-up regeneration and future
15 maintenance activities and, similarly, the nature of
16 the sampling program in a scientific sense requires
17 that there be sampling before in terms of establishing
18 basic controls. Normally with the variability of
19 natural environment systems, you are looking at least
20 at a period of a year until we get some sense for what
21 kind of variability exists.

22 We intend to implement that effects
23 monitoring -- effects and effectiveness monitoring
24 program. We attempt -- and we intend as part of the
25 review and focus direction for that program to involve

1 those technical stakeholders that were originally
2 involved in helping us to design it to ensure that --
3 for the good reasons that come about through using the
4 public in what we do.

5 Q. When you say you intend, you are
6 talking prospectively that with the effectiveness
7 monitoring that you contemplate in place revisions may
8 subsequently take place to the guidelines; is that
9 right?

10 A. The bottom line is as the results
11 come in from that monitoring program, those results
12 will be reviewed, within that technical forum they will
13 be reviewed internally within the Ministry. Those
14 results may suggest that the guidelines need
15 refinement; they may suggest, for example, that the
16 width of a reserve on a water body should be expanded
17 perhaps in some cases or perhaps can be reduced,
18 relative to the effects that it produces as has been
19 assessed through the monitoring program.

20 Those particular results would then be
21 incorporated into the revised guidelines and those
22 revisions to guidelines would go through the normal
23 stakeholder in a more -- in broader sense review for
24 comment and consultation and the Ministry would have to
25 make the final decision on the actual content of the

1 guidelines themselves.

2 Q. So if an individual stakeholder
3 believes that a particular guideline lacks scientific
4 justification, would that stakeholder be able to bring
5 that forward in some fashion under your review process?

6 A. If we are talking about a
7 non-technical stakeholder, the most appropriate forum
8 would be -- for that individual or group to express
9 their opinion, in my belief would be at the broad
10 review stage where there was a proposed change to the
11 guideline and we are in the process of circulating it
12 to a number of the interest groups, stakeholder groups
13 as we did with, for example, those parties who made
14 submissions within the environmental assessment
15 process.

16 Q. All right. I want to discuss with
17 you how revisions to guidelines and how perhaps the
18 preparation of new guidelines would impact on existing
19 timber management plans.

20 Let's move some distance from the
21 theoretical world and go to the world where a salesman
22 for an Ontario pulp and paper company is in Beijing, he
23 has the opportunity to sell \$10-million of kraft pulp
24 from Ontario to a Chinese buyer, he calls back to
25 Canada, he says: Can we enter into this contract?

1 The two issues: First of all at the mill
2 level with the other contracts that the Ontario mill
3 has: Do we have the capacity to meet that contract?
4 At the woodlands level, do we have the wood to meet
5 that contract? And let's assume that the mill manager
6 says: Yes, we have the capacity and the woodlands
7 manager says: Yes, we have the five-year TMP in place,
8 it has gone through a thorough review and we have the
9 wood.

10 Will that timber management plan be
11 grandfathered in effect and protected from subsequent
12 revisions to the provincial guidelines or the creation
13 of new guidelines. Is that company - and I use the
14 large company, it could just as well be a saw mill
15 owner who has a contract to sell some -- a small saw
16 mill owner that has a contract to sell some lumber in
17 Toronto, he has got a timber management plan that has
18 gone through all the process, the time and the cost, he
19 says: Yes, I can do it.

20 Is something going to happen that
21 prevents him from meeting that obligation because of
22 the creation of a new guideline or a change to an
23 existing guideline?

24 A. The individual that -- the company
25 you describe in this context had an approved timber

1 management plan?

2 Q. Yes.

3 A. My sense that approved management
4 plan basically then has dealt with implementing the
5 guidelines in place at the time. My understanding
6 would be that, generally speaking, you would be
7 correct, that that would be -- that would be pretty
8 well an agreed upon commitment.

9 Now, my problem here is coming from two
10 and responding to you comes from two levels and perhaps
11 Dave might be able to help here. I am not sure of all
12 of the specific regulations within the Crown Timber Act
13 that the Minister may call upon to make an amendment
14 if, in his judgment, it would represent a significant
15 environmental impact to continue.

16 I believe generally - and I can follow
17 that up - that there are provisions for the Minister to
18 make those kind of changes. Normally, however, it is
19 my experience that you will not see situations where
20 modifications to the guidelines would result in
21 significant alterations of your ability or the
22 company's ability to meet those commitments in those
23 circumstances.

24 I have seen very few situations of
25 approved plans where I would say that those kinds of

1 changes have been made because, for the most part, we
2 are not looking at, I guess, major environmental
3 catastrophies, if you will, being at stake here,
4 although I do believe the Minister does have the
5 flexibility to make those kinds of adjustments if it is
6 required. Dave do you...?

7 MR. SCOTT: A. The difficulty I have
8 with hypothetical situations, and I realize that --
9 recognizing it may not be that hypothetical, but there
10 is so many other questions that need to be asked in
11 this kind of scenario.

12 If you are dealing with just the
13 five-year approved timber management plan and the
14 woodlands manager says: Yes, we have the supply, I
15 would think that in my opinion that commitment would be
16 honoured. However, if you are looking at a ten-year
17 sale of that kind of volume and the woodlands manager
18 is aware of what guidelines are coming into revision,
19 is aware of how those revisions are going, I would say
20 there has to be a dialogue back and forth before a firm
21 answer is given.

22 Q. Yes, but apart from the question of a
23 long-term sale, it would be fair to say that an
24 approved plan would be considered to be a pre-existing
25 obligation?

1 A. Well, all plans, of course, can be
2 amended and, you know, certainly there is an amendment
3 process there, but I would say in terms of wood supply
4 that that wood supply will be there and I can't, in my
5 mind, think of where a revision to the guidelines would
6 have a great impact on the supply of wood in a
7 five-year TMP.

8 Q. All right. So what I would like to
9 know is whether an industry can reply on an approved
10 timber management plan as being a reliable statement
11 for industry or for that particular company that it has
12 an approved plan --

13 A. Yes.

14 Q. Or does an approved plan mean
15 something or not, that's what I'm saying.

16 A. Yes, an approved plan means
17 something.

18 Q. That is what I am saying.

19 MR. COSMAN: Thank you very much. Those
20 are my questions.

21 THE CHAIRMAN: Thank you, Mr. Cosman.

22 Ms. Swenarchuk, are you ready to proceed
23 at this time?

24 MS. SWENARCHUK: Mr. Edwards is going
25 proceed first.

1 THE CHAIRMAN: Mr. Edwards, come up.

2 Are you for or against, Mr. Edwards, in
3 connection with this panel?

4 MR. EDWARDS: Am I for or against what,
5 Mr. Chairman?

6 THE CHAIRMAN: Well, are your questions
7 going to be as those of a party in opposition?

8 MR. EDWARDS: If I ever change from that
9 status, Mr. Chairman, most assuredly I will let you
10 know.

11 THE CHAIRMAN: Okay.

12 MR. EDWARDS: Ms. Swenarchuk and I have
13 just done this to accommodate the timing of
14 cross-examination for both of us.

15 CROSS-EXAMINATION BY MR. EDWARDS:

16 Q. Mr. Straight, in your
17 examination-in-chief you focused somewhat on the tools
18 available to the resource manager. Do you recall
19 mentioning things such as the library and other types
20 of information which are available to the resource
21 manager in making a decision?

22 MR. STRAIGHT: A. Yes.

23 Q. You have heard the expression that
24 knowledge is power. Do you generally agree with that
25 proposition?

1 A. On the stock market perhaps.
2 Knowledge is power. I would not -- I don't necessarily
3 I agree with that, nor do I necessarily disagree. I
4 would have to think about that before I really gave you
5 an answer to that.

6 I think sometimes power can be a very
7 difficult -- I think knowledge can be a very difficult
8 thing to deal with and impose a lot of burdens
9 necessarily than just provide power. There is also the
10 saying that the more you know the less you know.

11 Q. Well, we may get to that one too but,
12 sir, in my event, it is important for a resource
13 manager in making decisions to have access to
14 information; do you agree with that?

15 A. Yes.

16 Q. And the type of information that is
17 available to the decision-maker includes information
18 that we have seen in previous panels, things such as
19 wood flow charts; do you recall those?

20 A. I don't specifically recall seeing
21 those, but I am generally aware of them, yes.

22 Q. They exist, you know that.

23 A. Yes.

24 Q. And the reports of wood utilization
25 by mills and licensees, for example, you are generally

1 familiar with those types of reference?

2 A. I am generally aware of that kind of
3 information, yes.

4 Q. All right. Do those types of
5 documents contain any deep dark secrets which should
6 prohibit their dissemination to the general public?

7 A. Which specific kinds of documents are
8 you referring here to? If you would identify them, I
9 could perhaps give you a better indication, recognizing
10 that I won't be the final answer on it.

11 There are times when there are company
12 records that they feel should be kept confidential just
13 within the industry because they are competing with
14 other members of the same kind, other companies.

15 Q. I am talking about documents which
16 don't necessarily reflect the cost of product, but
17 documents which reflect the source and the location
18 where the wood was cut.

19 A. The location where the wood was cut
20 is a public record, yes.

21 Q. In your view, that should be a public
22 record?

23 A. It will also be part of the timber
24 management plan, yes, which is viewed by the public.

25 Q. I see. You indicated there are some

1 areas where industry may object to the making public of
2 that and we have seen --

3 A. No, I did not indicate that the
4 industry would object to making that public.

5 Q. All right. What areas, if any, would
6 the industry object to making public in your
7 understanding?

8 A. Mr. Edwards, I don't believe I am
9 qualified as an expert for the industry. I can
10 perhaps -- and, in that context, I don't feel really
11 capable of answering that question in that way.

12 Q. In your experience, Mr. Scott, you
13 are knowledgeable in that area as to what types of
14 information the industry appears to decline to wish to
15 make public?

16 MR. SCOTT: A. In my experience I can
17 only think that sometimes scaling records are not
18 available to the public. Wood volume harvested from
19 certain areas, as part of the timber management
20 planning process, would become public but actual
21 specific scales that a crew cut not be.

22 Q. Do you know why that is?

23 A. I would imagine it would have to do
24 with payment to staff in the companies -- who work for
25 the companies. I am not really sure. I just know

1 that's one area that is generally considered to be a
2 company record.

3 Q. Matters relating to cost?

4 A. Certainly scaling is a matter
5 relating to cost.

6 Q. All right. Scaling slips also
7 reflect location of cut however?

8 A. Yes, but that information is put
9 together as part of the analysis of the plan.

10 Q. What I am getting at, sir: Is there
11 any reason - and this will be back to the first
12 witness, Mr. Straight - is there any reason that you
13 are aware of that the information as to where wood is
14 cut should not be easily accessible to members of the
15 public?

16 MR. STRAIGHT: A. Well, as I indicated
17 earlier, the information on where wood is cut is a part
18 of the formal documentation requirements of the timber
19 management plan and that information is available to
20 the public in a public record, a matter of public
21 record.

22 Q. It shouldn't be necessary to make a
23 Freedom of Information Act application to get that
24 information?

25 A. To find out where wood has been cut,

1 no, I wouldn't deal with it in that manner. I am not
2 aware of any requirement.

3 Q. It shouldn't be necessary to start a
4 lawsuit or bring a motion under the rules of court to
5 get that type of information?

6 A. Maybe I am missing something in
7 what -- in where you are going, Mr. Edwards. My
8 understanding is, is that as part of the timber
9 management plan there is a commitment to annual
10 reporting of harvest, the companies will submit --
11 basically will indicate to the Crown where those
12 harvest areas are.

13 Those areas are confirmed by the Ministry
14 of Natural Resources. That goes into a record of
15 annual depletions, that record is accumulated over the
16 five-year period and that material is made available as
17 part of the documentation of the timber management
18 planning process and is available for public review.

19 Q. Where?

20 A. As part of a report -- then becomes a
21 part of - and my understanding again here, I am not the
22 expert on it, but I am reasonably certain that this is
23 correct - then becomes the report of past operations
24 which forms the next -- a section of the next five-year
25 plan and all of that information is available for

1 public review.

2 Q. Where is it available?

3 A. It is available in the district
4 offices, it is available at the public consultation --
5 at the open houses that form part of the public
6 consultation which again will be described in future
7 panels.

8 Q. Sir, to be a little more specific, if
9 one of my clients was to show up in the springtime to a
10 lake or an area that had been cut during the last
11 winter and that operator had not been at the lakeshore
12 or near that lake for several months during winter
13 cutting season and he was to discover some practices
14 which he found upsetting; that is to say, an improper
15 access made or a cutting to the lakeshore, are you
16 suggesting that he would then be able to go to the
17 district office and find out who did the cutting?

18 A. The situation you are describing is a
19 case where he now knows cutting has occurred, correct?

20 Q. Well, absolutely, there is no
21 question about that one.

22 A. You are now verging into what the
23 subject matter that we will be dealing with in Panel 16
24 which is compliance monitoring and the course of action
25 that will be taken in dealing with that.

1 Q. Well, I am not asking what the MNR
2 would do, I am asking what information would be
3 available to the operator in that circumstance if he or
4 she, adopting a self-help process, wanted to find out
5 who had actually done the cutting, and done the act
6 which impinged upon the outpost lake.

7 Is that information available? Are you
8 saying that that is the case?

9 A. In my experience where I have dealt
10 with those kinds of situations, that information has
11 been provided to the individual.

12 Q. And ought it to be available in all
13 cases in ones such I have just described?

14 A. And what is the specific information
15 you would want to know?

16 Q. Who --

17 A. The operator, as I understand it?

18 Q. The operator who operated in that
19 particular area who drove the tertiary road through to
20 the lakeshore or who cut to the lakeshore in violation
21 perhaps of the timber management plan. Ought that
22 information be available?

23 A. You are talking here about the
24 licensee undertaking the cutting?

25 Q. I am talking about the person who did

1 the cutting and perhaps that might be the licensee in
2 some cases?

3 A. It may or may not. The Ministry
4 would deal with the licensee. My sense is that
5 information generally as you describe it in terms of
6 providing the individual with the name of the licensee
7 who was responsible for the cutting should be provided.

8 Q. It should be provided?

9 A. Yes.

10 THE CHAIRMAN: Is it provided?

11 MR. STRAIGHT: In my experience it is.

12 MR. EDWARDS: Q. You haven't consulted
13 with the MNR's legal department on this point recently;
14 have you?

15 MR. STRAIGHT: A. No, I haven't.

16 Q. All right. The in-house legal
17 department, I mean.

18 Sir, you also gave evidence to the effect
19 that some of the specific tools besides the library and
20 other information, manuals, et cetera, included outside
21 experts. I think you even mentioned people like the
22 MTR and Hydro. Do you recall that--

23 A. That's correct.

24 Q. --as part of your testimony. You
25 concede that there are other government agencies which

1 have expertise relevant to timber management planning?

2 A. There are other government agencies
3 that have expertise relative to timber management
4 planning, in a general sense, yes.

5 Q. Yes. The MNR does not have a lock or
6 monopoly on decision-making expertise either; does it?

7 A. Decision-making expertise, I don't
8 believe that we are the only people that make
9 decisions, no.

10 Q. All right. And do you agree that
11 the MNR does not have a monopoly on expertise in the
12 field of decision-making?

13 A. Yes, I would agree with that.

14 THE CHAIRMAN: Mr. Edwards, excuse me,
15 but just going back to that last line of questioning,
16 rather than leaving it by way of implication or
17 innuendo, are you indicating that you have made such a
18 request to the Ministry for the name of a licensee who
19 was cutting a particular area and that request was, or
20 that information was denied and you were told to go
21 elsewhere such as using the Freedom of Information
22 legislation or something like that?

23 MR. EDWARDS: Sir -- or, Mr. Chairman, on
24 behalf of another client I have made -- not a NOTOA
25 client - I have made such a request and I have been --

1 I am about to be bringing a motion under the rules of
2 court to obtain that information because it was
3 suggested by me that that was perhaps faster than
4 Freedom of Information and that's the way we are going.

5 THE CHAIRMAN: But the position of the
6 Ministry was what?

7 MR. EDWARDS: Was that the type of
8 information as to the wood flows, reports of mill
9 utilization, all that sort of stuff was information
10 that ought to be the subjust of a Freedom of
11 Information application.

12 THE CHAIRMAN: But what about providing
13 you with the name of the person or persons who were
14 responsible for the cutting?

15 MR. EDWARDS: That's where the
16 information would be, we would hope.

17 THE CHAIRMAN: And they wouldn't give you
18 that information either?

19 MR. EDWARDS: Not yet. The instructions
20 I have from my client; that is to say, the Northern
21 Ontario Tourist Outfitters is that the experience is
22 somewhat similar in the hypothetical that I have put to
23 the members of the panel; that is to say, showing up
24 months after perhaps some damage has occurred and then
25 trying to find out who actually did it, looking perhaps

1 to find out who to sue, if anybody, if you have a cause
2 of action, and the difficulty in obtaining that
3 information.

4 That is my instruction from my client and
5 it is confirmed in a totally unrelated file that I have
6 that doesn't relate to Tourist Outfitters.

7 And I just wanted to ask this gentleman
8 whether his theory was that that information ought to
9 be provided and he agrees that it ought to be.

10 MR. STRAIGHT: Mr. Chairman, if I could
11 just interject. In my response I specifically made
12 mention of the licensee or the company who was licensed
13 to operate in that area. There may be some very subtle
14 points of law for getting down to the actual skidder
15 operator or cutter that may be involved and I am not
16 sure of the legal implications of that particular
17 situation.

18 THE CHAIRMAN: Or are you even able to
19 find out the name of the licensee regardless of who the
20 operator was, or sub-licensee or whatever?

21 MR. EDWARDS: In the particular case I am
22 dealing with, we know the names of the licensee.

23 THE CHAIRMAN: Was that provided by the
24 Ministry?

25 MR. EDWARDS: Yes, it was. After some

1 negotiation back and forth it was provided.

2 THE CHAIRMAN: Thank you.

3 MR. EDWARDS: Q. Sir, getting back to
4 the field expertise and decision-making, I believe --
5 or my notes indicate that you stated that it was the
6 policy to use outside expertise to make decisions.
7 That's the way I paraphrased you.

8 Would it be perhaps better to put it
9 that's it is the policy to bring in some outside
10 experts to have some input into the decision as opposed
11 to making the decision?

12 MR. STRAIGHT: A. I am going to require
13 some clarification. First of all, it is not a policy
14 of the Ministry to bring in other experts.

15 What I specifically said yesterday, I
16 believe, was that we encourage staff to use expertise
17 that was required to make decisions. There are
18 policies on things like public consultation included
19 within our policy of integrated resource management, if
20 you will, and as part of the actual timber management
21 planning process.

22 Now, with that particular qualification,
23 I am not sure -- perhaps you could rephrase your
24 question.

25 Q. Would you agree that the MNR sees its

1 role as the decision-maker perhaps after consulting
2 outside experts?

3 A. The MNR sees -- within timber
4 management planning, when that regional director and
5 Director of Timber Sales Branch signed that plan they
6 are making decisions on a course of action, yes.

7 Q. The role of MNR as seen by you, sir,
8 just as that of the honest broker attempting to make
9 those tough decisions?

10 A. Honest broker. In a general sense,
11 right. I guess another way of saying it, I see MNR in
12 many cases, depending -- dealing with your clients in
13 particular, being a mediator of decisions that attempts
14 to balance the views of tourist operators, the views of
15 the timber industry and as previous counsel indicated,
16 many times the needs and the views of local anglers.

17 THE CHAIRMAN: But surely, Mr. Straight,
18 MNR is more than just an mediator having expertise in
19 the area which is being regulated in the first place?

20 A mediator seems to imply somebody who
21 comes in almost as a neutral facilitator to put the
22 opposing views together, but surely MNR has its own
23 views as to what should or should not be done?

24 MR. STRAIGHT: In all sincerity, Mr.
25 Chairman, I spent a lot of time thinking about that and

1 I have dealt an awful lot with tourism, timber
2 industry, angling, local angling interactions and I
3 very much consider our role to be a mediator.

4 Our first objective is to try and get
5 parties together to work out a mutually satisfactory
6 solution to the problems and it has always been my
7 feeling that by and large, in most cases, we are able
8 to achieve that. When the crunch comes on and we can't
9 do it, a decision has to be made, you are correct. But
10 the first rule of thumb is to do whatever you can to
11 mediate a compromise that all parties can agree to.

12 And quite often when we get into
13 decisions involving tourist operators in particular, we
14 have to also represent the local recreational public,
15 if you will, because a lot of times they don't
16 necessarily show up at the bargaining table.

17 MR. EDWARDS: Q. Sir, in your design of
18 the decision-making process, has it ever been even
19 considered that the MNR might, from time to time, adopt
20 the role merely of a stakeholder?

21 A. Two things: First of all, it is not
22 my decision-making process and if -- what do you mean
23 by MNR adopting the role as a stakeholder? My belief
24 and my practice has always been one of trying to
25 represent all stakeholders.

1 Q. You have no belief that there is any
2 sort of institutional bias on the part of the MNR?

3 A. I have not seen an institutional bias
4 on the part of MNR and my experience and where I have
5 operated, I do not believe I have an institutional
6 bias.

7 Q. Has it ever been considered in your
8 experience that another agency or ministry may, in
9 certain circumstances, act as the arbiter of disputes,
10 or is that never considered?

11 A. What disputes are you referring to
12 and what kind of role and what kind of -- I don't
13 understand your question, sir.

14 Q. Has it ever been considered that
15 experts from other ministries such as Northern
16 Development and Mines or perhaps private arbitrators
17 might be employed from time to time in an effort to
18 resolve the types of disputes that have been described
19 here this morning?

20 A. Where those individuals or types of
21 expertise are required, we normally do operate with
22 those individuals in making decisions. Tourism
23 representatives are very much a part -- a formal part
24 of the timber management planning process. We invite
25 those people to sit down with them, we work with them

1 and tourist operators and timber companies and other
2 interests in attempting to work -- in reaching
3 decisions in particular instances.

4 Again, it is my experience that involving
5 those individuals is a common part of our process.

6 Q. Sir, that's interesting, but the
7 question was whether it has ever been considered that
8 another agency or ministry might be employed as an
9 arbitrator. In your experience, has that ever been
10 even thought of as an alternative?

11 A. We have -- I have seen situations
12 where we have jointly worked with MTR, Ministry of
13 Tourism and Recreation, to facilitate decisions.

14 I guess there always would be the
15 potential for situations or decisions to be facilitated
16 by other groups. If the situation demanded it and, in
17 a general context, I would agree that that is a
18 potential option.

19 Q. The MNR in its own material, sir, has
20 noted that bump-up, to use those words or catch phrase,
21 can be brought out by the MNR of its own volition or
22 indeed it may be a requirement of the Ministry of the
23 Environment.

24 Where does bump-up fit in the great
25 scheme of things?

1 THE CHAIRMAN: But, surely Mr. Edwards,
2 that's a statutory situation brought under the
3 Environmental Assessment Act or power given to the
4 Minister by statute, the Minister of the Environment,
5 I'm talking about.

6 MR. EDWARDS: The MNR in its own
7 materials has suggested that from time to time, of its
8 own motive, of its own motion it will voluntarily
9 submit something to bump-up; that is to say, to
10 environmental assessment and I am just wondering under
11 what --

12 THE CHAIRMAN: But even it didn't submit
13 voluntarily, the Minister of the Environment would have
14 the power to order that Ministry to do so; would it
15 not?

16 MR. EDWARDS: Oh, very certainly. I am
17 interested in knowing when the MNR of its own motion is
18 going to consider doing this or whether that was a
19 serious suggestion or not.

20 THE CHAIRMAN: Well, I would suggest to
21 you that in certain situations where the Ministry of
22 Natural Resources, as an example, might consider that a
23 application would likely be subject to the
24 Environmental Assessment Act and say a full hearing in
25 any event, rather than wait for the Minister of the

1 Environment to indicate that there will be such a
2 hearing, it might voluntarily decide that it is going
3 to accede to the process, if I can put it that way, on
4 its own.

5 That doesn't imply one way or the other
6 that one doesn't have the power to make sure that that
7 occurs.

8 MR. EDWARDS: Well, I am certain that
9 that is the case, but I am just wondering if there are
10 any other circumstances where the MNR might voluntarily
11 submit in effect to an outside arbiter and, in fact
12 this is the only one I have come across, so I would
13 like to hear the witness' theory on that if it differs
14 from yours in any way?

15 THE CHAIRMAN: Who being the outside
16 abriter, the Minister of the Environment?

17 MR. EDWARDS: Well, that is in effect a
18 type of outside scrutiny, arbitration in effect
19 certainly the very statutory and judicial type of
20 thing.

21 But what I am looking for is whether they
22 have considered any outside bodies other than the
23 inevitable bump-up in particular cases. They suggest
24 in their own materials that they might voluntarily go
25 and I just want to know when.

1 Q. Would you disagree with anything the
2 Chairman said; do you have any other theories?

3 MR. STRAIGHT: A. I would not disagree
4 with anything the Chairman said.

5 Q. Do you adopt the answer given by
6 counsel?

7 THE CHAIRMAN: You can certainly do so,
8 with respect, from time to time. Duck first.

9 MR. EDWARDS: Q. Sir, the planning
10 process which has been described and the
11 decision-making process as set out in the manuals, is
12 it fair to say you see that as a generally satisfactory
13 process.

14 MR. STRAIGHT: A. You are referring to
15 the timber management planning manual?

16 Q. Yes.

17 A. You are getting into subject matter
18 for other panels in terms of in depth, but it is my
19 experience that having applied that process that it is
20 a good one.

21 Q. And it is the MNR's theory of this
22 process that only minor adjustments ought to be made to
23 that planning process, of this process that we are in
24 right now is that, at the most, minor adjustments
25 should be made?

1 A. I think we have an acceptable
2 planning process. It may be that adjustments are
3 required from time to time as adjustments, in most
4 things, would be required from time to time as we learn
5 from experience.

6 Q. And you expect that the result of the
7 environmental assessment process is that only minor
8 adjustments will take place?

9 A. My expectations? That would be my
10 expectations.

11 Q. That certainly confirms the
12 information which is passed on to MNR employees at
13 these workshops relating to the environmental
14 assessment process?

15 A. If that's a question, sir, I don't
16 understand.

17 Q. Sir, I am producing and showing you a
18 document - or one page I am going to show you - a
19 document which is one page from a larger document
20 called Class EA for Timber Management and Timber
21 Management Planning. It's a document by Mr. Al
22 Bisschop which was presented at one of these workshops.

23 A. Mm-hmm.

24 Q. I will show you that page and ask you
25 if you are familiar with it. (handed)

1 THE CHAIRMAN: That will be Exhibit 386.
2 Mr. Edwards, could you advise the Board again where
3 this came from.

4 MR. EDWARDS: The last page of the
5 document called Class EA for Timber Management and
6 Timber Management Planning by Mr. Al Bisschop, and it
7 was received in response to one of our interrogatories.

8 THE CHAIRMAN: All right. I am advised
9 that this document should be entered as Exhibit 387.

10 MR. FREIDIN: Do you have an extra copy?

11 MR. EDWARDS: I'm sorry, sir, I have just
12 run out.

13 MR. STRAIGHT: We have one.

14 THE CHAIRMAN: Mr. Edwards, what was the
15 date of this seminar, do you have any idea?

16 MR. EDWARDS: Mr. Chairman, I am not
17 entirely certain from the interrogatory that I received
18 back. I believe it was October of '88.

19 My friend -- I can show my friend the
20 entire document. It is voluminous and I am sure he
21 could confirm the date. I believe it was October of
22 '88.

23 MR. EDWARDS: It certainly indicates that
24 it is up to the date of October anyway, perhaps even a
25 bit later than October of '88.

Q. Would you confirm, sir, that it is

1 your expectation of this process that minor adjustments
2 to the planning process will be one of the results?

3 MR. FREIDIN: Well, Mr. Chairman, I don't
4 know where this is all getting us. What these
5 witnesses think -- what their answer to that question
6 is, I don't think would be helpful.

7 THE CHAIRMAN: I don't think it is
8 particularly relevant in the sense that whatever the
9 result of this process is will be decided by the Board
10 not the Ministry.

11 MR. FREIDIN: The witnesses are here to
12 answer questions.

13 THE CHAIRMAN: It is sheer speculation on
14 what will happen as a result of this hearing on the
15 part of this Ministry or, for that matter, any other
16 party. So I don't know whether if is going to be
17 particularly productive other than to indicate that in
18 an internal forum -- I take it this was an internal
19 type of seminar?

20 MR. EDWARDS: That is my understanding,
21 Mr. Chairman.

22 THE CHAIRMAN: The Ministry or
23 representatives of the Ministry put forward their best
24 guess as to what might be the outcome.

25 MR. EDWARDS: Q. Is that what you

1 understood this was, was the Ministry's best guess as
2 to the outcome?

3 MR. FREIDIN: Well, Mr. Chairman, I don't
4 think that question is any more relevant than the last
5 one. I don't think this whole line of questioning is
6 really helpful to the Board. Ask him questions on the
7 facts, that will help the Board.

8 THE CHAIRMAN: Well, with respect, Mr.
9 Freidin, this is a document that was put forward by the
10 Ministry to obviously some Ministry staff at some
11 seminar and it says what it says.

12 What I think the Board is indicating is
13 is that whatever their expected outcome of this
14 proceeding is is irrelevant to the fact that the Board
15 will decide this case on the evidence as it sees fit,
16 won't pay attention to anything like this or any other
17 suggested outcome put forward by the parties.

18 As far as it being relevant to be
19 entered, it probably is relevant in the fact that it is
20 a position put forward by the Ministry and it came to
21 the attention of this party. Beyond that, I don't know
22 where it goes.

23 MR. CAMPBELL: Mr. Chairman, could I
24 speak to this as well, please, because we asked a
25 similar interrogatory and got the same material and we

1 intend to cross-examine upon it. And before the Board
2 deals with it, I think it should hear from all persons
3 who may take an interest. So I have submissions to
4 make with respect to the relevance and use of this
5 information as well.

6 I will advise the Board that I don't
7 think, apart from identifying it as part of the
8 training material which is particularly the area being
9 covered by this panel, apart from that, the author of
10 this particular document is appearing on a later panel
11 and we had intended to reserve particular questions on
12 this exhibit and other related training material to
13 that time.

14 But, in my submission, there are some
15 valid concerns that certainly we intend to explore
16 through cross-examination in relation to this document
17 at that time.

18 MR. COSMAN: Mr. Chairman, perhaps also
19 before you make a decision on this point, I am not sure
20 either where this kind of enquiry may assist us.

21 Any good counsel will have discussed with
22 his client at different stages of the proceeding where
23 a proceeding might be going. Mr. Edwards may have had
24 documents going around among NOTOA, Mr. Campbell,
25 ourselves, we can always have a great flurry of

1 speculative documents put in to you and all we have
2 here -- we don't have anybody who can identify, no one
3 was even at the meeting, this was the view of an
4 individual as far as we know presented to a study
5 group.

6 I can present something similar, I am
7 sure we all can. What is going to be important in due
8 course are the conditions that the Ministry are going
9 to have to present to the Board and the other parties
10 are going to have to present to the Board and that is
11 the subject of legitimate debate and submission. But
12 to try and guess at internal speculative direction on
13 the part of any party is surely a waste of this Board's
14 time in this important hearing.

15 MR. EDWARDS: Mr. Chairman, if Mr.
16 Bisschop is being called, I will move on.

17 THE CHAIRMAN: All right. Let's deal
18 with it when Mr. Bisschop comes. The Board won't rule
19 on the issue at this time. We will hear submissions
20 from parties at the time Mr. Bisschop is called.

21 MR. EDWARDS: Thank you, Mr. Chairman.

22 Q. Sir, perhaps I will ask this of the
23 panel: The Timber Management Guidelines for the
24 Protection of Tourism Values have been introduced
25 through this panel. Who amongst the three of you would

1 be the person most qualified to speak on these?

2 MR. STRAIGHT: A. I probably had more
3 experience dealing with them, certainly definitely more
4 than Dr. McNamee and perhaps a bit more than Mr. Scott.

5 Q. Mr. Straight, how does the MNR
6 determine whether tourism values exist within an area
7 which is subject to the timber management planning
8 process?

9 A. I believe Mr. Edwards that Mr. Pyzer
10 and Mr. Clark went into some depth on that back in
11 Panel 7, did they not?

12 Q. Sir, I didn't have the benefit of
13 being here and I perhaps in hindsight we're beginning
14 to regret that right now. Are you in a position to
15 answer that question?

16 A. I can provide a general response, if
17 the Chairman would want me to.

18 THE CHAIRMAN: Okay.

19 MR. EDWARDS: Mr. Chairman, I know I was
20 not here for Panel 6 or Panel 7. Ordinarily if you
21 miss the boat you have missed the boat, but it is my
22 submission that these guidelines have come in through
23 this panel. I think the questioning in the area is
24 most relevant to this panel and, without pleading total
25 financial inpecuniosity, that is the reason that my

1 client couldn't have me here.

2 THE CHAIRMAN: Well, we understand part
3 of your problem, Mr. Edwards, but we don't want to
4 repeat a lot of what has gone on before.

5 Ms. Swenarchuk, do you have something to
6 say?

7 MS. SWENARCHUK: I have the same concern.
8 It would be my submission that Mr. Pyzer did not
9 discuss tourism guidelines in any depth, nor has any
10 other witness. The guidelines were actually only filed
11 in this panel.

12 I discussed this question with Mr.
13 Freidin. I certainly have questions on the contents of
14 the guidelines which I think are very relevant to the
15 Board's examination of the entire ESSA process and, in
16 my submission, it is not at all repetitive to take a
17 good look at those guidelines at this point, that has
18 just not been done.

19 THE CHAIRMAN: All right, are these
20 guidelines, Mr. Freidin, going to be dealt with in
21 depth by any other witness in a future panel?

22 MR. FREIDIN: Yes, they will be dealt
23 with in all of the panels dealing with the various
24 activities, primarily I think Panel No. 10.

25 I did speak with Ms. Swenarchuk and I

1 understand she would like to get some information on
2 these guidelines, that she feels it is necessary for
3 her to cross-examine Dr. McNamee and I have indicated
4 to her that Mr. Straight is probably the appropriate
5 person to put those questions to and that he would be
6 as helpful as he could be up to a point and then I was
7 going -- Mr. Straight will in fact indicate when he
8 feels he's getting beyond, you know, a level that he
9 feels comfortable with.

10 Now, I make those remarks in the context
11 of Ms. Swenarchuk's use of the information. I am not
12 too sure where Mr. Edwards was going with this. It
13 might very well be that Mr. Edwards' concerns can be
14 dealt with in another panel, but I don't know where he
15 is going, so...

16 THE CHAIRMAN: Okay. If the Board were
17 to allow a discussion of the tourism guidelines in this
18 panel - and I guess it is probably prepared to do so
19 since the parties have clearly indicated that, in their
20 view, they haven't been dealt with in any meaningful
21 way up to this point - the Board would do so on the
22 basis that we will not repeat the same type of
23 information in the subsequent panels.

24 In other words, if we are going to deal
25 with the guidelines extensively or fairly extensively

1 at this point, we don't want to repeat later on the
2 same information through other witnesses.

3 So let's have it either now or later. If
4 you want to get it in a general fashion from Mr.
5 Straight, that is your option at this point.

6 MR. FREIDIN: Well, Mr. Chairman, with
7 respect, Mr. Straight did not come here prepared to
8 deal with those guidelines. It is quite clear that
9 that wasn't the intention of this panel.

10 There is evidence prepared for subsequent
11 panels where the tourism guidelines will be dealt with
12 in examination-in-chief, but that is quite a different
13 ball of wax than allowing the guidelines to be
14 canvassed and dealt with in cross-examination only.
15 Whatever limited opportunity I have to deal with them
16 in re-examination, in my respectful submission, is not
17 the same as the scope I would have in
18 examination-in-chief, and I don't believe that I should
19 in any way be prejudiced in limiting my
20 examination-in-chief on later panels.

21 MRS. KOVEN: Excuse me, Mr. Freidin.
22 Won't we run into the same problem in Panel 10 though.
23 You are referring to that discussion as the last paper
24 in that panel, where you have charts of all the
25 different stakeholders and who will be giving that

1 testimony?

2 MR. FREIDIN: Mr. Clark.

3 MRS. KOVEN: And Mr. Clark is prepared to
4 talk about tourism values?

5 MR. COSMAN: Mr. Chairman, as you know, I
6 have completed my cross-examination. I was aware from
7 having read Panel 10 that it was coming and we have
8 decided that is when we were going to address the
9 question.

10 MS. SWENARCHUK: Mr. Chairman, with
11 respect to my friend, this is the difficulty in my view
12 that is presented by a particular order of calling
13 witnesses by the proponent when they are here to
14 examine and hear evidence on effects monitoring
15 program, one third of which is concerned with these
16 particular guidelines, in our view, it is not possible
17 to evaluate that process without taking a look at
18 guidelines that are a subject of that process.

19 We find it unfortunate that the proponent
20 has not led its full evidence on the guidelines.

21 THE CHAIRMAN: Mr. Edwards, I apologize
22 but I think we are going to break your
23 cross-examination at this point because the Board wants
24 to discuss this question amongst itself.

25 MR. EDWARDS: Mr. Chairman, if I can just

1 make one final comment. The material is introduced
2 formally in the witness statement, the witness
3 statement is replete with references to tourism and
4 tourism guidelines and the use -- and this whole panel
5 is talking about the use of guidelines generally.

6 I can't think of a more appropriate place
7 to ask some questions. I don't intend to be all day in
8 this area, but I think there are some things that
9 should be drawn out at this stage because it is the
10 appropriate time to do so.

11 Those are my submissions.

12 MS. SWENARCHUK: Mr. Chairman, if I can
13 just bring your attention to several other documents
14 which were also introduced in this panel for which the
15 same question arises and on which I reach these
16 conclusions; that is, the spruce silvicultural guide
17 and the road construction manual as described.

18 Now, we certainly want to examine those
19 documents in some depth as well, however, it seemed
20 appropriate to us, given that they did not form a
21 significant part of the witness statement or the
22 discussion of the panel, to discuss those guides, the
23 silvicultural guide in Panel 10 and the roads guide in
24 the access panel, but I think it is not to the
25 advantage of the Board to proceed to an evaluation of

1 Mr. McNamee's evidence without a look at the tourism
2 guidelines.

3 THE CHAIRMAN: Well, even if you have a
4 good look at the tourism guidelines, Ms. Swenarchuk,
5 what about the fact that this witness may not be the
6 primary witness able to deal with those guidelines?

7 Mr. Freidin has indicated that Mr. Clark
8 is prepared to deal extensively I take it, Mr. Freidin,
9 with the tourism guidelines in particular in the next
10 panel?

11 MS. SWENARCHUK: Well again, with respect
12 to my friend from the Ministry, I do not believe that
13 the other parties here should be prejudiced from
14 examining the witnesses of this panel by the fact that
15 this document has not been testified to by the
16 Ministry's preferred witness.

17 It has been entered through his
18 witnesses, I think we are entitled to assume that they
19 can answer questions with reference to it.

20 THE CHAIRMAN: Well, the Board is going
21 to consider it in the break and if it comes to the
22 conclusion that your objections are valid, Ms.
23 Swenarchuk, then it may advise the Ministry that you
24 will have an opportunity or the parties will have an
25 opportunity to re-examine one or more of these

1 witnesses subsequent to the tourism guidelines being
2 addressed in the next panel.

3 In other words, it may be able to be
4 handled by recalling--

5 MS. SWENARCHUK: Thank you.

6 THE CHAIRMAN: --one of the witnesses
7 to -- Dr. McNamee, for instance, to be cross-examined
8 further after Mr. Clark has given testimony.

9 MR. FREIDIN: Mr. Chairman, in your
10 deliberations I would just ask you to have reference to
11 paragraph 13 of the witness statement which basically
12 sets forth the position of the Ministry on this matter
13 and, as well, the letter which accompanied the witness
14 statement from Ms. Murphy which is dated August the
15 26th, 1988 and paragraph 5 of the executive summary.

16 I mean, this was never raised -- like I
17 say, I am quite -- I understand where Ms. Swenarchuk is
18 coming from and that why I said: Ask the questions and
19 get as much information as you can from Mr. Straight on
20 it, but it was never raised that there was a particular
21 problem with this panel.

22 THE CHAIRMAN: No, but her concern
23 evidently, Mr. Freidin, is the fact that she can ask
24 the questions of Mr. Straight, if he can't provide the
25 answers that she's looking for, then she's indicating

1 it may prejudice her cross-examination of Dr. McNamee.

2 Do I understand the issue correctly?

3 MS. SWENARCHUK: Yes, Mr. Chairman, and
4 with respect to paragraph 13, certainly there are many
5 other manuals and types of documents referred to in
6 Panel 8 on which I do not intend to cross-examine this
7 panel at all and with two documents filed in this
8 panel, as I have said, I will refer that to other
9 subsequent panels.

10 However, it is frankly quite a surprise
11 to me to learn that with regard to these guidelines
12 which are so fundamental to the discussion of Mr.
13 McNamee and the entire evidence of this panel that
14 paragraph 13 refers to tourism guidelines as well. So
15 if it was not raised in advance on my part, then I wish
16 to raise it.

17 THE CHAIRMAN: All right. The Board is
18 going to -- we might as well take the mid-morning
19 break.

20 MR. EDWARDS: Mr. Chairman, if I may, I
21 would invite you to consider the statements of issues
22
23 as well, because I think they pretty clearly identified
24 that the parties intended to explore this.

25 THE CHAIRMAN: Okay. Board at this point

1 is intending to take 20 minutes. If we have to take
2 longer, we will send word down.

3 Thank you.

4 ---Recess taken at 10:50 a.m.

5 ---Upon resuming at 11:30 a.m.

6 THE CHAIRMAN: Thank you, ladies and
7 gentlemen. Please be seated.

8 Ladies and gentlemen, the Board
9 apologizes for the delay in returning, however, we have
10 given this whole matter which has arisen careful
11 consideration and have decided to deal with the matter
12 by way, in effect, of a formal ruling and I am going to
13 read it to you slowly and you can probably have the
14 opportunity of checking the transcripts later on if you
15 don't get it all down.

16 The Board has considered the issues
17 raised by Mr. Edwards and Ms. Swenarchuk evidencing
18 their concern over the fragmentation of the evidence
19 relating to the Timber Management Guidelines for the
20 Protection of Tourism Values introduced by this panel.

21 These guidelines were discussed in Panel
22 7 yet were not introduced at that time. The evidence
23 adduced by this panel concerned, in part, the ESSA
24 Report and the work done by Dr. McNamee in designing
25 hypotheses for effects monitoring for resource

1 protection guidelines for fish, moose, and tourism
2 values.

3 The intervenors intend to cross-examine
4 Mr. Straight on the Timber Management Guidelines for
5 the Protection of Tourism Values in order to obtain
6 what, in their view, is relevant information to enable
7 them to effectively cross-examine Dr. McNamee on his
8 evidence. The Ministry, however, has indicated that an
9 in-depth discussion of the Tourism Guidelines will be
10 dealt with in-chief by Mr. Clark in Panel 10, thus
11 depriving the intervenors of the opportunity of
12 cross-examining Dr. McNamee on any new evidence
13 relative to the Tourism Guidelines which may result
14 from Mr. Clark's evidence.

15 This, in the Board's view, does prejudice
16 the intervenors' ability to cross-examine Dr. McNamee
17 on his evidence, a situation which could have been
18 avoided had the evidence on tourism values been
19 discussed earlier and, accordingly, the Board will be
20 obliged to rectify this situation as follows:

21 1) The Board will allow the parties to
22 cross-examine Mr. Straight on the Tourism Guidelines
23 recognizing that the Ministry's principal witness
24 designated to deal with these guidelines is Mr. Clark
25 in Panel 10.

1 2) The Board will, therefore, require
2 Mr. Freidin's undertaking to recall Dr. McNamee at the
3 conclusion of Panel 10's evidence to allow the parties
4 to further cross-examine him at that time on issues
5 which may have arisen from Mr. Clark's evidence.

6 The Board also wishes to instruct the
7 Ministry to take all attempts to avoid placing the
8 intervenors at a disadvantage in terms of their ability
9 to properly cross-examine witnesses on a particular
10 panel where evidence relied upon by those witnesses
11 will not be dealt with until a later panel.

12 And, again, we want to try and avoid this
13 situation as much as possible in the future and I
14 think, Mr. Freidin, some consideration should be given
15 in terms of calling subsequent panels to avoid the
16 problem that has arisen in connection with this panel.

17 So I think at this time, Mr. Edwards, you
18 are free to cross-examine Mr. Straight on the Tourism
19 Guidelines to the extent that he can answer, with the
20 understanding that after Mr. Clark has given his
21 evidence on the Tourism Guidelines -- Mr. Freidin, I
22 take it we have your undertaking to recall Dr. McNamee
23 at the end of Panel 10?

24 MR. FREIDIN: You do, if it is necessary.

25 THE CHAIRMAN: Well, it will be necessary

1 if any of the parties at that time indicate that they
2 wish to further cross-examine him as a result of
3 evidence given by Mr. Clark.

4 So we will ask the parties at that point
5 and in the event that they wish to cross-examine him,
6 then the Board expects this witness to be recalled at
7 that time.

8 MR. FREIDIN: Well, I would expect that
9 counsel would go as far as they can on these guidelines
10 with Mr. Straight.

11 THE CHAIRMAN: Yes.

12 MR. FREIDIN: As far as Mr. Straight
13 feels comfortable dealing with it. It may be that he
14 can answer enough questions that we don't have to worry
15 about it.

16 THE CHAIRMAN: Well, that may be but it
17 will be up to the parties doing the cross-examining to
18 determine whether or not they are happy with that
19 arrangement.

20 Mr. Edwards?

21 MR. FREIDIN: When you are speaking at
22 the end of Panel 10, are you talking as the sort of --
23 we can talk about details later.

24 As to the exact date, I don't know what
25 Mr. McNamee's availability is. If there is a problem,

1 I I will let you know. I don't want to raise it now.

2 THE CHAIRMAN: Well, obviously Dr.

3 McNamee, the Board will take into account your own

4 personal commitments at that time, but our view would

5 be to have you back as soon as possible at the

6 conclusion of Panel 10.

7 DR. McNAMEE: That is fine.

8 THE CHAIRMAN: So that we could then move

9 on from there with this case.

10 Mr. Edwards?

11 MR. EDWARDS: Thank you, Mr. Chairman.

12 Q. Mr. Straight, how does the MNR

13 determine whether tourism values exist within an area

14 subject to timber management planning?

15 MR. STRAIGHT: A. I guess here we are

16 back at where we started originally and there was a

17 fine distinction that I tried to make in terms of

18 dealing with the tourism -- the Timber Management

19 Guidelines to Protect Tourism Values and the

20 information that was available.

21 The information that is available to

22 protect tourism values was described in Panel 7 in some

23 depth and I will try and briefly summarize that for

24 your purposes here, if that is acceptable.

25 Basically, Mr. Pyzer I believe

1 specifically referred to the fact that we have an
2 organization that deals with the management of public
3 lands as one source of information. Those individuals
4 maintain a large range of land tenure type of documents
5 that are available.

6 We have other Ministry programs which
7 become involved with activities that tourist operators
8 may want to conduct; whether it is for the purposes of
9 approval under the Forest Fires Prevention Act or a
10 great many -- or whether they want to put a dock in a
11 water body or whatever. We have a basic organization
12 that works very closely with the tourism industry in
13 terms of giving them leases, permits and things of that
14 nature. So we become generally very familiar with what
15 is going on.

16 And, again, I guess to give a complete
17 answer, Mr. Chairman, I am having to go back a fair bit
18 on this particular question and to what was presented
19 on 7. So if you think I am going too far, perhaps
20 somebody should caution me.

21 We have conservation officers whose job
22 it is to enforce things like the Game and Fish Act for
23 which most tourist operators are involved one way or
24 another because many of the tourist businesses are
25 dependent on those kinds of resources. Those kind of

1 contacts are quite frequent, common as opposed to
2 exceptional. We also operate very closely with MTR
3 and, as I indicated, we normally deal with them as a
4 representative of the Tourist Industry Act within the
5 timber management planning procession and, in doing
6 that, their information and their records on tourist
7 establishments and tourist interests become known to
8 the planning process.

9 We also provide within the timber
10 management planning process specific public
11 consultation requirements and one of the primary
12 objectives of that is to identify tourism values as
13 well as other values and set up the potential and the
14 opportunity for dialogue with tourist operators in
15 resolving any concerns they may have.

16 I think Mr. Clark and Mr. Pyzer went into
17 a great deal of effort in explaining how the tenure of
18 the Ministry offices, how the staff in terms of their
19 associations in a lot of northern Ontario communities
20 that are reasonably characteristic of the area of the
21 undertaking lend itself to the identification of those
22 kinds of values.

23 The main thing you are asking is: We
24 normally -- to actually implement the timber management
25 planning process to utilize the tourism guidelines.

1 Those are in general - and again very general and I may
2 have missed one or two examples - those in general are
3 the primary ways by which we are aware of tourism
4 values within the area of the undertaking.

5 Q. Sir, when a resource manager is
6 making a decision with a view towards limiting of the
7 effects, is this the book that he or she turns to--

8 A. That is the primary --

9 Q. --the tourism guide?

10 A. That is a primary vehicle, yes.

11 Q. The purpose of the book is to limit
12 the effect?

13 A. The purpose of the book -- one of the
14 main purposes of the book is to limit effects, that's
15 correct.

16 Q. Sir, the book is prefaced by a rather
17 lengthy list of people who participated in some fashion
18 or other in its creation, at least that is the
19 suggestion.

20 Is it your evidence today that the
21 tourist outfitters -- Northern Ontario Tourist
22 Outfitters approved the final copy of this?

23 A. I think Mr. Pyzer would tell you and
24 Mr. Adamchik would tell you from the Ministry of
25 Tourism, that those are not -- those guidelines are not

1 our product, they basically -- both Tourism and Natural
2 Resources were essentially resource people, if you
3 will, to the process; that the tourist industry
4 themselves and the forest industry with the aid of a
5 consulting firm were the ones that basically put those
6 guidelines together and Mr. Pyzer was our
7 representative in that process and the results of my
8 discussions on the subject with him indicate to me that
9 that is how he would interpret that.

10 Q. You are suggesting then that the
11 final copy, the final product was actually approved by
12 the tourist industry?

13 A. I can't tell you whether somebody
14 slapped a formal signature of approval on it.

15 What I can tell you is that our
16 understanding is, is that we provided a facilitator to
17 the process, we asked the tourist industry and we asked
18 the forest industry to come up with a document which
19 would assist us and assist them in reaching decisions
20 which would minimize impact, and that's the degree to
21 which I can make or address your particular question
22 there.

23 Q. Sir, with respect to these
24 guidelines, could I suggest to you that nowhere in them
25 is provision made for identification of areas, road

1 locations at the first and earliest stages of the
2 process the public input - and that includes the
3 Tourist Outfitters input - comes at a later date after
4 the general scheme has been achieved by an in-house
5 review.

6 Is that the way it operates?

7 A. No, I don't personally agree with the
8 way you are saying it now, but I guess I need a bit
9 more focus in trying to answer your question. Are you
10 suggesting that roads is a particular issue?

11 Q. I am suggesting that roads is the
12 central issue with respect to the tourist outfitters
13 interest, sir.

14 A. Yes, I would agree with that.

15 Q. Yes.

16 A. Okay.

17 Q. Would you agree with me that the
18 input for the tourism component; that is to say, the
19 private sector tourism component comes well after the
20 Ministry is underway in its timber management planning
21 process?

22 A. No, I would not agree.

23 Q. Could you point to me a single -- do
24 you have a copy of the guidelines there with you?

25 A. Yes, I do.

1 Q. Could you refer to page 11.

2 MR. EDWARDS: Does the Board have a
3 copy -- its copies.

4 Q. Do you have that, sir?

5 MR. STRAIGHT: A. Yes, I do.

6 Q. Sir, the identification of the areas
7 of concern is something which is done by - I am
8 referring to pages 10 and 11 which refer to areas of
9 concern - the identification of areas of concern is a
10 process which takes place in-house initially?

11 A. I don't know if that's particularly
12 true. The areas of concern identification is not a
13 static point in time issue.

14 I mean, that's the point. I mean, when
15 we go into a timber management planning process we just
16 don't blank our minds and start over, we use issues in
17 terms of even areas of concern that previous -- that
18 tourist operators or representatives of tourism may
19 have brought to our attention in an attempt to identify
20 the results of all that past contact and put it on a
21 map.

22 And very early in the planning process we
23 put that map out for people to see, to comment upon, to
24 revise, if it is required, and to assist us in
25 identifying those areas that should be evaluated and

1 considered.

2 Q. Sir, these guidelines which we were
3 told are mandatory guidelines were initially to be
4 described as the Guidelines for the Protection of
5 Scenic Values. Do you know that to be the case?

6 A. I don't specifically know that to be
7 the case, no.

8 Q. Obviously the witness on Panel 10
9 would have some familiarity with the process?

10 A. You say obviously. I don't know if
11 it is obvious or not, sir.

12 Q. Well, can we hope that that will be
13 the case?

14 MR. FREIDIN: Well, I hear you, Mr.
15 Edwards, and I will keep that in mind when I am
16 developing my examination-in-chief.

17 MR. EDWARDS: Thank you.

18 Q. Sir, the guidelines --

19 MR. EDWARDS: If I may just have a
20 minute, Mr. Chairman.

21 Q. The guidelines refer to areas of
22 concern. How large, sir, is an area of concern?

23 MR. STRAIGHT: A. I believe the
24 definition, and I am just generally -- it is my general
25 understanding here, an area of concern refers to a

1 geographic area of interest or of value to stakeholders
2 or other resource users.

3 Within that context, it is my
4 understanding that there is no specific limitations on
5 the area of concern itself other than those which may
6 be implied in terms of a judgmental or a practical call
7 at the local level.

8 Q. The preliminary areas of concern
9 which are something which anti-date the area of concern
10 are defined by whom?

11 A. You mean the official definition or
12 who identifies them?

13 Q. Who identifies them?

14 A. The preliminary areas of concern?

15 Q. Yes.

16 A. I think the process that I had just
17 described to you in terms of it not being a static one,
18 in terms of the public being involved, in terms of MNR
19 and its staff being involved to the degree that I
20 suggested with our lands -- our lands technicians, our
21 conservation officers, our timber technicians, our
22 foresters, as well as in terms of timber values
23 particularly, the role that the MTR consultants would
24 play are sources of that.

25 Q. And no public input at that stage?

1 A. Did I not identify public input?

2 I did identify earlier when I referred to
3 it that we are not talking about a static process, that
4 we were talking about a frequency and a fairly common
5 history of public consultation, not only with regard to
6 timber management planning, but also with regard to
7 annual meetings which our districts hold with tourist
8 operators where we have special meetings with tourism
9 associations: the Kenora District Camp Owners
10 Association, the Northern Ontario Tourist Operators
11 Association, the Northwestern Ontario Tourist Operators
12 Association and all of these groups are all sources of
13 contact, are all potential sources of information.

14 Q. Could I suggest to you, sir, in the
15 identification of the preliminary area of concern there
16 is no formal provision for input from the tourist
17 industry in these guidelines?

18 A. I guess I am having trouble in terms
19 of what you mean formal.

20 Q. There is no obligation to request the
21 involvement of the industry?

22 A. Well, I guess where you are going to
23 get into some depth in that is in terms of the formal
24 technicalities in Panel 15 when we discuss the timber
25 management planning process.

1 My general understanding is, is that
2 there is an invitation to participate in a planning
3 process that is sent out before the commencement of or,
4 at best, in the very early stages of implementing the
5 timber management planning process and that, in a
6 formal context, would include an invitation to hear
7 from parties who may be concerned.

8 Q. Sir, the Timber Management Planning
9 Manual for Crown Lands in Ontario deals with the
10 determination of access at pages 14 and 15. Do you
11 have that document available to you?

12 A. No, we don't, not right at the
13 moment.

14 Q. Timber Management Planning Manual.

15 THE CHAIRMAN: What exhibit number is
16 that, Mr. Edwards?

17 MR. EDWARDS: I believe it is Exhibit 7,
18 Mr. Chairman.

19 MS. BLASTORAH: Yes, Mr. Chairman.

20 MR. EDWARDS: Q. Do you have that, sir?

21 MR. STRAIGHT: Yes, I do.

22 Q. Is there anywhere in that process,
23 sir, where it is mandatory that the preliminary areas
24 of concern or the specific areas of concern which are
25 identified through refinement of those identified at

1 the preliminary stage must have formal input from the
2 industry -- tourist industry?

3 A. Well, I am not sure. There are two
4 pages that deals with this particular section. If you
5 would like me to review that and look at that and get
6 back to you, I would do that.

7 I find that -- personally I find it
8 difficult to read through two pages which I haven't
9 seen before in some technical depth and be able to make
10 the kind of judgments you are asking of me.

11 But I would also try and indicate to you
12 that, generally speaking, there are provisions for
13 public consultation, specifically within the
14 Environmental Assessment Document, which do deal with
15 the formal process of public consultation and the
16 places where public input formally are sought, and that
17 also compliments that rather common process that I
18 indicated before.

19 Q. Perhaps, sir, we can defer to the
20 panel -- the witness on Panel 10 who may be in a better
21 position to answer that.

22 MR. EDWARDS: Is that fair, Mr. Freidin,
23 rather than ask this witness to give an undertaking?

24 MR. FREIDIN: I think in terms of where
25 that input might come within the formal timber

1 management planning process, that it is more
2 appropriate in Panel 15 where we are going to deal with
3 the timber management planning process.

4 MR. EDWARDS: Very well. I will move on,
5 Mr. Chairman, from that particular suggestion if the
6 witness isn't too familiar with the document.

7 Q. Perhaps one final general type of
8 question, sir. Would you agree with me that the bulk
9 of that document relating to tourism values deals with
10 the mitigation of the impact on scenic values?

11 MR. STRAIGHT: A. I would agree with you
12 that that particular document does deal a lot in terms
13 of the paper, it deals a lot with the scenic values,
14 yes.

15 MR. EDWARDS: Is Mr. Stansbury going to
16 be called as a witness on any panel?

17 MR. FREIDIN: No.

18 MR. EDWARDS: No.

19 Q. Mr. Scott, if I can switch to you for
20 a moment, please, sir. You indicated that you
21 participated in some licensing seminars. Do you recall
22 that evidence, sir, dealing with timber licensing?

23 MR. SCOTT: A. Yes, I chaired a section
24 on licensing part of a session on timber management
25 planning in Kenora in 1985.

1 Q. Did that deal with third party
2 licensing as well?

3 A. It dealt with a broad range of
4 licensing options, third party was one of those
5 options.

6 Q. I see. Are conditions imposed in
7 third party licenses; silvicultural conditions,
8 environmental conditions imposed on an operator in such
9 a license?

10 A. There are conditions imposed -- I
11 shouldn't say imposed, there are conditions of licenses
12 as they are issued.

13 I am not sure specifically what you mean
14 by silvicultural conditions. There may be conditions
15 to approvals to operate in a fashion that conforms to
16 some silvicultural prescription, and that's an approval
17 to -- an annual approval to a licence.

18 Q. I am talking about a licence which
19 tells you where you can cut; are conditions imposed in
20 licences for third party operators?

21 A. I would believe that you are talking
22 about an annual approval, not the licence itself.

23 The licence dictates the area. The
24 licence generally dictates an area on which harvesting
25 can occur and the annual approval to that licence

1 dictates a specific area of cutting and that would
2 have -- it is not uncommon for it to have conditions
3 which would conform to silvicultural prescriptions.

4 Q. Would these special conditions be
5 attached to and form -- or attached to the licence?

6 A. They would be attached to the
7 approval, not necessarily to the licence.

8 Q. When an operator violates one of
9 those conditions, what does the MNR do in those
10 circumstances, sir?

11 A. We monitor for compliance of those
12 conditions via cut inspections and there are a wide
13 range of scenarios of what kind of compliance you are
14 actually talking about.

15 If we are talking about a simple thing
16 such as a few stumps on a cut inspection showing to be
17 too high which is going to get in the way of a
18 bulldozer and which is a violation of the Crown Timber
19 Act, we may go to the operator and simply say: A
20 couple of those stumps are getting too high, make sure
21 they scuff away the snow in the winter time.

22 We could be talking about conditions
23 where they are cutting outside of the area approved
24 under the actual approval, in which case we are dealing
25 with a trespass situation.

1 Q. What do you do in a trespass
2 situation?

3 A. We have a policy, I forget the number
4 off hand, a timber sales policy, a procedure to follow.
5 We can conduct an investigation and, depending on the
6 severity of the offense, the Crown Timber Act does
7 provide for imposing penalties under that Act, usually
8 in the form of stumpage charges if a penalty is
9 warranted.

10 Q. Do you have any idea how many times
11 that has occurred?

12 A. In the province, no, of course not, I
13 don't deal with that scale.

14 Q. In your experience?

15 A. In my experience, if I take a
16 district like Fort Frances when I was the unit forester
17 there, it would not be uncommon for that to happen once
18 or twice a year.

19 Now, we were dealing with 45 district
20 cutting licence operators and five licensees on that
21 crown management unit. That's a rough guess. I am
22 going by memory here, but I think that would be a good
23 rule of thumb.

24 Q. Who would have the record of that
25 information, sir, prosecutions? Were there any

1 prosecutions under the Crown Timber Act?

2 A. In terms of the actual records
3 themselves, I believe the -- I can't even remember
4 where we file them anymore. I know they are filed on
5 the management unit record and I know they are matters
6 of record. The specific location, I just can't recall
7 where they would be right now.

8 Q. Sir, if the violation is of this
9 nature, let us --

10 MR. FREIDIN: Mr. Chairman, compliance
11 monitoring and the enforcement of the Crown Timber Act
12 will be dealt with in Panel 16 and I just ask that Mr.
13 Edwards keep that in mind.

14 THE CHAIRMAN: Mr. Edwards, are you going
15 to go much further with this line of questioning?

16 MR. EDWARDS: Not much further. I just
17 have a couple of questions, but it has to do entirely
18 with, I think, the topic at hand.

19 THE CHAIRMAN: Very well. Go ahead.

20 MR. EDWARDS: This one has to do with
21 limitation of effects, that's exactly what I want to
22 ask him about.

23 Q. Sir, let us assume that the violation
24 of the Crown Timber Act or the term of the licence or
25 the term of one of those conditions results in an

1 impact. For example, an improper tertiary road is
2 knocked through to a tourist outfitter's lake, for
3 example, an illegal access point is created; what then
4 is done to mitigate the effect in those circumstances,
5 sir, and I am not talking about prosecuting the
6 wrongdoer if he or she can be found, I am talking about
7 mitigating the effect on the operator of that remote
8 camp?

9 Is there any program in effect to deal
10 with that on a consistent basis?

11 MR. SCOTT: A. I am just trying to
12 search in my mind for a moment to think of specific
13 instances that I can recall where that has happened,
14 where I have been a practising forester.

15 Yes, I can recall one instance in Fort
16 Frances again there was a small skidder trail punched
17 in, I know we can -- you can bulldoze off the edge of
18 the trail, oftentimes it has happened - it may happen
19 in the winter time and the instance I am thinking of is
20 the winter time - you can bulldoze up roads after a
21 scarification has gone through there.

22 There are a number of mitigating actions
23 that can occur; essentially taking out the road, if it
24 is a road that is providing access where we did not
25 intend access to be provided.

1 Q. What if it is clear cutting to the
2 shore of a lake?

3 A. I mean, obviously we can replant the
4 area, site prepare the area and replant it.

5 MR. STRAIGHT: A. Perhaps I can help
6 here. Would that be appropriate?

7 Q. Certainly.

8 A. That's one area that I have had a
9 fair bit of experience in, both particularly as a
10 district manager when at Wawa and also in my current
11 capacity in it is one that we treat very sensitively
12 and it is one that has to be treated very sensitively.

13 Impacts on tourism can occur both because
14 prescriptions in cases were not followed. They can
15 also -- they may also occur in cases where everyone
16 thought there was a good prescription in place and, for
17 one reason or another, it didn't work.

18 Q. That's the exact suggestion or the
19 exact case I am putting to you, sir. Could you address
20 that?

21 A. Okay. In my experience the Ministry
22 utilizes a great many tools to try and deal with that
23 situation.

24 In your own interrogatories to Panel 8
25 you requested information on a Nova -- sorry, no, there

1 was another lake, I am sorry I have got the wrong
2 example, but there was a situation in Wawa district on
3 Esnagi Lake where an access road was creating problems
4 for tourist operators and there was a specific instance
5 where the Ministry - and by the way this wasn't a
6 timber access road, it happened to be an access road
7 that was put in to build the dam - but nonetheless, the
8 implications as a result of that access were similar.

9 In that particular instance, we utilized
10 the Public Lands Act and created a specific closure and
11 to do that we also had to deal with a very sensitive
12 public in Dubreuilville in that particular case who
13 also wanted access to those kinds of resources and
14 basically, as a district manager, it meant myself going
15 there with my staff and explaining the situation to the
16 residents of Debreuilville.

17 And one of the interesting points about
18 this was Dubreuilville was basically a French-Canadian
19 community and everything you did there you had to do
20 through an interpreter which made it very interesting,
21 but one of our challenges there was to try and convince
22 that community that there were advantages to them from
23 a viable tourist operation there and, at the same time,
24 try and generate some support by the community by
25 indicating that other angling opportunities could be

1 provided perhaps to compensate for what they considered
2 to be, in this case, a loss.

3 And, in that particular instance, there
4 was a case where we used the Public Lands Act which
5 indeed at that particular point in time and, in my
6 experience, provided an acceptable solution to the
7 tourist operators on that particular lake.

8 There are other cases where you don't
9 have to use the Public Lands Act, you may actually be
10 able to go in and tear up or otherwise remove the road
11 and render it impassable and the district manager again
12 is in the difficult position of having to try and
13 balance that particular need relative to the needs for
14 resident anglers for hunting and fishing. And so he
15 exercises the tools he has with a great degree of
16 caution if they are going to work.

17 There may well be -- of course, in that
18 same scenario there are going to be types of situations
19 where you may not be able to do anything in terms of
20 physically preventing access. You try -- and that's
21 why it is so important at the start of the process to
22 get in very early with the alignment of the roads,
23 recognize the values that are there and try and avoid
24 the problems, to the degree you can, with the original
25 alignment process for the road.

1 When the tools -- under things like the
2 Public Lands Act and specific removal mechanisms of the
3 road don't work, the district manager also then can
4 deal with potential measures under the Fisheries Act,
5 the Game and Fish Act which looks at controlling
6 fishing pressure and, to some degree within that
7 context, assists to minimize the impact by imposing
8 regulations regarding fishing that may help to keep
9 exploitation at a low level, or a lower level and
10 minimize impact.

11 Those are a range of some of the options
12 that are available without exhausting the entire field.

13 Q. Do you see it as part of the MNR's
14 obligation, sir, to undo the damage which may have been
15 done by somebody who has violated the prescriptions?

16 We are not talking about somebody who has
17 complied with the plan that you have got in place, we
18 are talking about somebody who has violated it; is it
19 the MNR's obligation to undo that?

20 A. Well, you will recognize that within
21 the timber management planning process -- and again I
22 indicated very early in the process, Mr. Chairman, that
23 this was very much an integrating panel, we can't help
24 but sort of jump throughout to some degree, and I
25 apologize for that but I think but it is also required.

1 Within the timber management planning
2 process there is a requirement for what we also refer
3 to as an AOC planning process which you can recall in
4 that arrow that I referred to in terms of the tools.

5 That will be discussed in depth in Panel
6 15, but part of that indicates it requires a review of
7 options, alternatives to deal with a specific value.
8 It also documents the rationale for the decision and it
9 also, as well as other things, it indicates the
10 monitoring commitments.

11 In the sense that that becomes a very
12 public commitment on the part of the planning process
13 in the Ministry's decision, my interpretation of that
14 would be that if we have made an effort to protect the
15 value, state it up front the way we are going to do it,
16 that I interpret that as a public commitment and I
17 interpret that as one that we will follow up and
18 provide whatever mitigating attempts that we can to
19 correct it.

20 Q. Specifically with respect to Oba Lake
21 which you were referring to, I understand there was
22 a --

23 A. Esnagi is the one I referred to.

24 Q. All right. You did mention Oba and
25 in the reply to the interrogatories you very clearly

1 dealt with a letter to Mrs. Lebrun in the Dubreuilville
2 situation.

3 A. Yes.

4 Q. With respect to Oba Lake, there was
5 in fact a clear cut in violation of a prescription to
6 the lakeshore or near the lakeshore?

7 A. Now, I will answer it two ways.
8 While I was there that did not occur. Also my
9 understanding in talking to the unit forester who
10 followed me was that it did not, and who did the
11 prescription, Mr. Greenwood, who you will be hearing
12 from later in evidence itself, was that he actually
13 took the tourist operators out after the cutting had
14 occurred for the particular prescription that I was
15 dealing with and they reviewed that together and they
16 were pleased with those prescriptions.

17 Now, in him giving me that information, I
18 can't tell you whether that was all of the cut or only
19 part of it, and nor can I tell you what happened in
20 subsequent operations to that particular time because
21 it was after I left and after Mr. Greenwood left, there
22 were still operations occurring in that area.

23 Q. I see. Was that on the south side of
24 the lake, sir?

25 A. I am generalizing. I believe some of

1 the cutting that I -- or some of the prescriptions I
2 was involved with at the planning stage, I believe,
3 were more to the south side of the lake.

4 Q. All right. Was there supposed to
5 have been a skyline reserve established on the south
6 side of the lake; do you recall that?

7 A. I can recall working with Mr.
8 Greenwood and he was intending to implement a skyline
9 reserve on at least part of that shoreline.

10 Q. All right. And prior to that
11 occurring you left, Mr. Greenwood will be testifying?

12 A. I left prior to the actual cutting
13 occurring.

14 Q. I see, okay. Sir, you mentioned some
15 other types of roads and at page 18 in the
16 guidelines -- the Tourism Guidelines there is use of
17 the word tourist roads. Does that have a definition
18 which you are familiar with, sir?

19 It is page 18, the Tourism Guidelines.

20 A. I believe there is a definition in
21 the text; is there not?

22 Q. "...primary and secondary
23 roads maintained for multiple uses,
24 including public access, having
25 sufficient tourism values to warrant the

1 identification of an area of concern."

2 Do you agree with that definition, sir?

3 Is it an appropriate definition for a tourism road?

4 MR. FREIDIN: Sorry, I don't know where
5 we are, Mr. Chairman.

6 MR. EDWARDS: I am sorry, it is page 18.
7 I just want to ask about other types of roads actually.

8 MR. FREIDIN: We are on page 18?

9 MR. EDWARDS: Under the tourist roads,
10 the 2.1.4, the right column and the bottom -- I guess
11 the last partial sentence:

12 "Tourist roads for the purposes of this
13 manual include those primary and
14 secondary roads..."

15 Q. Do you have that, sir?

16 A. Yes, I do.

17 Q. "...maintained for multiple uses
18 including public access...", et cetera,
19 et cetera.

20 You indicated that one of the roads that
21 had given a problem in the Wawa District was not
22 formally a forest access road but, sir, are there also
23 agreement forest roads; have you heard of that type of
24 road?

25 A. Are there agreement forest roads?

1 Q. Do they exist?

2 A. And your definition of an agreement
3 road?

4 Q. "Roads which are located on lands
5 which are managed by the MNR for a
6 conservation authority, a county or
7 municipality."

8 I am just going through a shopping list,
9 sir, of the roads that are listed in the Resource
10 Access Roads Policy and Implementation Strategies and
11 Guidelines and can I assure you that agreement forest
12 roads are listed there?

13 A. Yes. And what page is that?

14 Q. It is difficult to say.

15 THE CHAIRMAN: Mr. Edwards, where is this
16 going in terms of --

17 MR. EDWARDS: I want to go into the
18 mapping that Dr. McNamee's overlaying map and I just
19 want to ask a few questions about the types of roads
20 because this witness pointed out, and I am glad that he
21 did, some of the problems that my clients experience,
22 do not just relate to forest access roads.

23 There is a whole barrel full of other
24 types of roads out there that may not be immediately
25 subject to -- may not be called forest access, but are

1 clearly part and parcel of the timber management
2 process and I guess the suggestion I want to make is
3 that they ought to be -- that information ought to be
4 available to the tourist outfitters.

5 Q. Sir, have you ever heard of private
6 forest roads?

7 A. Yes, I have.

8 Q. Fuel wood roads?

9 A. Yes.

10 Q. New Ministry service roads?

11 A. Yes.

12 Q. Recreation access roads?

13 A. Yes.

14 Q. Cottage roads -- cottage access
15 roads?

16 A. Yes.

17 Q. Residential subdivision roads?

18 A. Yes.

19 Q. Public transport roads?

20 A. Yes.

21 Q. Winter roads?

22 A. Yes?

23 Q. Mining access roads.

24 A. Yes?

25 Q. Other roads.

1 A. What other roads?

2 Q. Well, sir, it is not my book, I
3 didn't write it, but would you agree with me that when
4 one is planning access into areas where tourism values
5 may be sensitive you don't have to just be concerned
6 with the "forest access roads", you have got to be
7 worried about the other access provisions; true?

8 A. I would agree with you and I would go
9 one step further and perhaps, since you referred to the
10 document Resource Access Roads Policy and
11 Implementation Strategies and Guidelines, perhaps
12 yesterday in leading evidence I generalized to the
13 degree of causing some confusion.

14 There are specific requirements of that
15 policy that deal with two areas that are of concern in
16 terms of the types of questions you are asking and one
17 is, is that the district looks at identifying a broad
18 road plans or roads that are being planned for the
19 district. They also look at identifying the need for
20 and identifying use strategies for each of those roads
21 relative to the purpose and relative to the need to
22 ensure that there is -- that all of the values of
23 potential concern, including tourist operators, are
24 included. In that context, the policies that are
25 identified here deal with your specific concern.

1 There is also very specific commitments
2 for the Ministry to go through public consultation
3 exercises in terms of involving the public in
4 minimizing and mitigating and preventing impacts.

5 There is a link between this particular
6 document and the Class Environmental Assessment to
7 provide a context by which messages go to district
8 managers that indeed they do have to consider the
9 implications of all roads, not just those within the
10 timber management planning exercise.

11 Q. I see, sir. And in the course of
12 assessing the impact of all these roads, would the use
13 of overlay maps be helpful?

14 A. The use of overlay maps, I would
15 expect is -- in terms of providing information, would
16 be one mechanism to use.

17 Q. What is the difference between a
18 five-year projection map and an overlay map?

19 A. I don't know.

20 Q. All right. Does anybody on the panel
21 know?

22 Dr. McNamee, you produced some rather
23 nice looking overlays yesterday on the visuals. Are
24 those things difficult to produce?

25 DR. McNAMEE: A. Are you asking whether

1 it is easy to produce overlays of that sort?

2 Q. Is it easy to produce overlays of
3 that sort?

4 A. Those overlays which you saw were an
5 action somewhat of the spacial structure which we
6 actually used. In that sense, they were fairly easy to
7 do.

8 I believe the question you are asking is
9 in -- actually, is it possible to take a series of maps
10 of actual on-the-ground maps of roads and tourist
11 operations and things of that sort and to overlay
12 those.

13 If that is what you are asking, I would
14 have to say that it is possible to do overlays of that
15 sort.

16 Q. Is it difficult or involve some...

17 A. I am not able to answer that myself
18 because we haven't done overlays of actual maps at all.

19 Q. Speaking generally as a resource
20 person who is interested in resource management
21 decision-making, would the use of overlay maps be of
22 assistance to you, sir, in assessing tourism values?

23 A. I have no experience whatsoever in
24 practical resource management. However, in terms of
25 being able to look at and assess what the effects of

1 particular management actions might be, I would have to
2 say that overlays would be helpful.

3 Q. Thank you.

4 MR. EDWARDS: I'll just be a moment, Mr.
5 Chairman.

6 THE CHAIRMAN: Can you indicate how much
7 longer you are going to be, Mr. Edwards?

8 MR. EDWARDS: Three minutes.

9 THE CHAIRMAN: Very well, we shall
10 certainly accommodate that.

11 MR. EDWARDS: I am dying to ask Mr. Scott
12 about the undercover enforcement of the Game and Fish
13 Act in the district in which he was in, but my friend
14 Mr. Freidin didn't think that was relevant to the
15 undertaking, so maybe I can get that outside this room.

16 Those are my questions. Thank you, Mr.
17 Chairman.

18 THE CHAIRMAN: Thank you, Mr. Edwards.

19 And the Board wants to thank you for your
20 accurate estimate as to how long you would be in
21 cross-examination. I think you were bang on.

22 The Board plans to break until two
23 o'clock for lunch and we will commence after lunch with
24 you, Ms. Swenarchuk.

25 Thank you.

1 ---Luncheon recess taken at 12:25 p.m.

2 ---Upon resuming at 2:00 p.m.

3 THE CHAIRMAN: Thank you. Be seated,
4 please.

5 MS. SWENARCHUK: Good afternoon, Mr.
6 Chairman, members of the Board.

7 CROSS-EXAMINATION BY MS. SWENARCHUK:

8 Q. Mr. Straight, my first question is
9 for you. If you would look at the witness statement
10 from Panel 8, please, at page 85.

11 MR. STRAIGHT: A. Yes, I have it.

12 Q. And the bottom of the left-hand
13 column you see groups who you have specified as being
14 involved in public consultation efforts by the
15 Ministry. I notice that there is no reference in that
16 list to environmental or conservation groups. Could
17 you tell me why that is?

18 A. That simply wasn't meant to be an all
19 inclusive list and it may well have been that that
20 particular group was not included as was indicated by
21 the word, et cetera.

22 Q. So we are et cetera; are we?

23 A. Well, it is my experience basically
24 that people in environmental groups could be also
25 cottagers, could also be members of NOTOA, could also

1 be members of OFAH as well. I don't consider that
2 necessarily to be one all inclusive group in that
3 context, but certainly there was no intent here to
4 suggest that environmentalists as may be represented by
5 Forests for Tomorrow would not be included in that
6 consultation.

7 Q. All right. If you would turn to
8 Figure 4 on page 98, please.

9 A. Yes, I have it.

10 Q. With regard to provincial guidelines
11 in the bottom left-hand corner for silviculture and
12 protection of non-timber values, you refer to
13 provincial auditing and coordination and you indicated
14 that auditing and coordination of the application of
15 these guidelines, if I have your wording correctly, is
16 a part or will become a part of the regular auditing
17 process.

18 Now, could you indicate for us what type
19 of auditing process you are referring to here? How is
20 it done, by whom, how often, what are the results, what
21 type of auditing process is this?

22 A. In the context in which audit is
23 mentioned there, it is primarily within the context of
24 the operational audit program in place in the Ministry
25 of Natural Resources, whereby main office audits

1 regions to ensure that policy and targets, for example,
2 are -- policies is being used and that targets are
3 being met.

4 Similarly, regions, in an operational
5 context, do the similar kind of checks, if you will, on
6 district staff in terms of ensuring that policies and
7 direction is being implemented in the specific
8 instance.

9 The audit here also refers somewhat
10 indirectly to the context of what I have referred to in
11 evidence-in-chief as basically a pre-approval audit, if
12 you will, of the timber management plan before the
13 regional director approves it to ensure that directions
14 have been incorporated and used in the timber
15 management planning process.

16 Much of the detail on the specific audit
17 function and the role, the pre-approval process is
18 currently basically in a draft procedure which will be
19 introduced in Panel 15 and in terms of Panel 16 we will
20 be going into some depth on all aspects of monitoring
21 of which the audit function that you see here as well
22 will be elaborated on in more depth.

23 Q. Is this then a paper audit; an audit
24 of documentation by the province of the region, by the
25 regions of the districts?

1 A. I am not sure exactly what you mean
2 by a paper audit.

3 Q. What I mean by that; is there any
4 comparison of documentation in the office with a field
5 inspection; does the auditing team engage in field
6 inspections?

7 A. The auditing team could get engaged
8 in field inspections.

9 Q. Is that part of their normal
10 practice?

11 A. It is not an essential part of the
12 process. If a field inspection will assist in terms of
13 generating an appreciation for whether or not the
14 districts are meeting the standards and doing -- and
15 utilizing the directions that they should, it could be
16 incorporated and it is not uncommon to see those kinds
17 of actual field inspections occur particularly at the
18 regional level.

19 Q. You mean the regional level of the
20 district?

21 A. A region auditing the district and it
22 may also occur in case of main office auditing regions,
23 if indeed that was, again, required to assist in
24 improving understanding and clarification.

25 Q. Well, can you help me with this

1 question: With regard to the application of the
2 guidelines and, for example, a regional audit of
3 district's approval of a given timber management plan,
4 if the region does not do a field inspection, can it
5 actually evaluate whether the guidelines were applied
6 in that plan?

7 If the region goes to the district and
8 speaks to people there and they say: Yes, we applied
9 the guidelines but the auditors have not examined the
10 field, isn't it correct that they are not really in a
11 position to see whether the guidelines were applied,
12 given the field conditions consistent with the purposes
13 of the guidelines?

14 A. I guess there is a potential that
15 that kind of a situation could occur. Let me try and
16 give you some of -- illustration of the kind of
17 experiences I have with that.

18 We would get, for example, a timber
19 management plan in at the region and I would ask
20 Neville Ward who works for me in the context of through
21 another supervisor but as a fish biologist, I would ask
22 through his superior that Mr. Ward review the
23 particular prescriptions relative to water quality and
24 fisheries habitat to ensure that the guidelines have
25 been met or at least to report on the degree to which

1 they had.

2 Based on his opinion and recommendations
3 that the regional director would then take that into
4 account when he comes to approving the plan.

5 When our regional fish and wildlife
6 people go out to actually audit a district for
7 application of the guidelines, I would generally expect
8 that they would include a bit of a field check to look
9 at the kind of prescriptions that have been applied.

10 Q. Are they instructed to do that?

11 A. There is no formal instruction to do
12 that, rather the intent of the audit is clear and there
13 is a reasonable amount of flexibility in terms of how
14 that would occur.

15 The other -- the part of the picture that
16 you also don't see at this point in time is what we
17 will be following up and doing in terms of a compliance
18 monitoring and reporting sense and there will be a very
19 formal record -- public record of our efforts in terms
20 of compliance monitoring which will be, again,
21 thoroughly sort of presented in Panel 16.

22 Q. If we can go back to my question and
23 your referring the matter to Mr. Ward for his review.

24 Isn't Mr. Ward at a disadvantage
25 reviewing how thoroughly the guidelines have been

1 applied if he doesn't have personal knowledge of the
2 geography of the fisheries, the water of the particular
3 land that the plan covers? He can look at the plan and
4 see what is written in it, but he cannot compare that
5 with the personal knowledge of the geography affected?

6 A. In terms of the fisheries guidelines
7 in particular, there are some very specific
8 requirements that must be met in terms of applying the
9 guidelines.

10 He also is not familiar with every single
11 lake in the region, but he is certainly, as part of his
12 responsibility, familiar with the nature of them and
13 the types of lakes and perhaps even similar types of
14 situations.

15 We also -- it is also not such a formal
16 and rigid process that we don't -- I mean, the Neville
17 Wards of the world, the John McNicols of the world -
18 and John is not necessarily at the regional level - but
19 our regional people are in constant and frequent
20 contact with district staff attempting to understand
21 the nature of resources they are managing, talking
22 about problems, getting out and mutually looking at
23 situations.

24 I mean, it is not as if there isn't a
25 good level of understanding that is available.

1 Q. Mr. Straight my question is really
2 quite simple: Wouldn't it result in a more accurate
3 auditing process if the auditor of the timber
4 management plan actually looked at the resource base
5 that the plan describes?

6 A. It is simply not practical for the
7 regional auditor to look at every single prescription
8 that would occur on the ground.

9 Q. And, therefore, presumably the result
10 of that is that, in most cases, I assume the auditors
11 do not look at the actual field, they do not go into
12 the field in doing the audit?

13 A. The district in auditing performance
14 or compliance would be looking at every area of
15 concern.

16 Q. In the auditing to which you were
17 referring in your testimony, Mr. Straight, I really --
18 I simply want to have a sense of how often those audits
19 involve field inspections?

20 A. That audit would not involve
21 inspecting all of the situations.

22 Q. Thank you.

23 MR. MARTEL: Could I ask a question then.
24 Do the audits occur by the district staff on each and
25 every location?

1 MR. STRAIGHT: Mr. Martel, that is a
2 particular description of those provincial guidelines
3 where we are dealing with monitoring locally for
4 compliance and impact and we will find out and be
5 discussing in some depth in 16 the general principle
6 that all area of concern prescriptions will be
7 monitored for compliance, will be inspected for
8 compliance.

9 MS. SWENARCHUK: Q. Now, you indicated
10 as well that training sessions for staff regarding the
11 implementation of the fisheries and moose guidelines
12 are imminent or, as you said, are going to occur in the
13 reasonably near future. Can you tell us when?

14 MR. STRAIGHT: A. That particular
15 scheduling is just right this minute basically being
16 worked out. I am generally aware of a session I
17 believe within the next two weeks where there will be
18 some general meetings of Ministry people to get
19 together to deal with this subject.

20 Unfortunately, at this point in time, I
21 can't give you a firm picture of what the actual
22 implementation schedule is, I am just not aware of it.

23 Q. Has there been any staff training
24 regarding the implementation of the guidelines up to
25 now?

1 A. There has been training that has
2 occurred in conjunction with those training programs
3 developed for the timber management planning process.
4 That would be a primary vehicle where those guidelines
5 were introduced and discussed.

6 There have also probably -- there have
7 also been some directions with regard, and discussions
8 at regional levels in the Ministry to this point in
9 time with regard to understanding and training in
10 general in terms of the guidelines.

11 Q. And can you tell us approximately
12 what proportion of the field staff who will actually be
13 implementing these guidelines have had the opportunity
14 to attend training sessions up to now?

15 A. In terms of the timber management
16 planning process...

17 Q. In terms of the application of the
18 moose and fisheries and tourism guidelines?

19 A. But, if you recall what I said, there
20 was specific reference to those guidelines as part of
21 the timber management planning training session.

22 Q. Okay.

23 A. And that has been the primary vehicle
24 to this point in time to deliver that message.

25 Now, I am not aware of the exact numbers,

1 but Dave informs me it is about 450 to about 500 both
2 industry and MNR employees.

3 Q. Mr. Jeffery asked you a question
4 yesterday about what happens -- this is with regard to
5 the application of the guidelines and I believe you
6 indicated that the primary emphasis is that the
7 guidelines are to be used, and Mr. Jeffery asked you
8 what happens if they are not used, and you referred to
9 the fact that that would become clear in the planning
10 process for the areas of concern and in the, I will say
11 my words, paper trail that follows that planning
12 process.

13 But isn't it correct, Mr. Straight, that
14 if, for example, the guidelines were not applied and,
15 therefore, a given resource value area was not
16 identified as an area of concern that would not turn
17 up in the previous planning process because it would
18 never have been registered within the planning
19 documentation?

20 A. If it had not been identified,
21 that's correct.

22 Q. Mr. Scott, would you agree that
23 forest planning for multiple products should be done on
24 a scale that ensures the long-term existence of all
25 representative eco-systems and that the only way we are

1 going to have productive forests with the values we all
2 want protected is if managers jointly develop
3 eco-system based management systems?

4 I will give you that one sentence at a
5 time.

6 MR. SCOTT: A. Yes, if you would please.

7 Q. Would you agree with the statement
8 that forest planning for multiple products should be
9 done on a scale that ensures the long-term existence of
10 all representative eco-systems?

11 A. I assume you mean time scale?

12 Q. By long-term.

13 A. Mm-hmm.

14 Q. Yes.

15 A. Okay, go on with the question.

16 Q. Do you agree with that statement?

17 A. That forest planning...

18 Q. For multiple products should be done
19 on a scale that ensures the long-term existence of all
20 representative eco-systems?

21 A. Yes, I believe that's correct.

22 Q. And would you agree that the only way
23 we are going to have productive forests with the values
24 we all want protected is if managers jointly develop
25 eco-system based management systems?

1 A. I am not really sure what you mean
2 bny eco-system based management system, can you...

3 Q. It is not a concept that as a
4 forester you use in your planning process; is that
5 right?

6 A. Well, I believe the forest is one
7 unit and there can be a multiple number of products
8 that can come from that.

9 Q. Mm-hmm.

10 A. The whole range that we have been
11 discussing before, I am not just talking in terms of
12 forest products such as lumber, tourism values, but all
13 different values in that context.

14 In that context I believe, yes, we need
15 to all work together to sustain those values in the
16 long term.

17 Q. Okay. Would you agree that managing
18 timber without paying attention to the total forest
19 eco-system means we are living on borrowed time?

20 A. That is such a difficult question to
21 answer because I am not sure what you mean by borrowed
22 time.

23 Q. I would take that to mean that
24 management, other than with paying attention to the
25 total forest eco-system, will not ensure long-term

1 productivity of the forest for all the purposes for
2 which we wish to use it?

3 A. I guess what I believe as a forester
4 is that we manage all those values better when we do
5 that together in concert.

6 But in terms of -- I think the eco-system
7 has an ability to sustain itself as well if we -- on an
8 annual basis, if we were to harvest one area and maybe
9 spread the clear cut a little bit larger than it should
10 for the depth of soil, I don't think that in the long
11 term on the forest management planning scale we would
12 do long-term damage.

13 The eco-system is based also on the soils
14 not just on timber harvesting, and if you work the
15 forest as a whole unit concept I think we do it better,
16 yes.

17 Q. If you take into account the entire
18 eco-system?

19 A. Yes.

20 THE CHAIRMAN: Mr. Scott, if you should
21 mismanage to a certain extent the forest or certain
22 aspects of the forest is it, in your opinion, in the
23 long-term - and this is a generalization - correctable?

24 MR. SCOTT: Yes, because of the time
25 frame. If we plan on a rotation age -- I will come

1 back to spruce where I am probably most comfortable.

2 If we have a rotation age of 90 years for
3 spruce and on one annual work schedule we mismanage in
4 some way, shape, or form I believe that over the period
5 of 90 years we have ample opportunity to identify that
6 mismanagement and correct the error and the system will
7 correct itself.

8 THE CHAIRMAN: Now, that's with respect
9 to the reproduction of the trees themselves, but what
10 about with respect to some of the other values? I know
11 you cannot generalize and say every value is
12 correctable, but by and large if you --

13 MR. SCOTT: I think by and large things
14 are correctable. And, again, that's why I asked the
15 question about time because time is so critical in that
16 where we do plan on the long term and we only do timber
17 management activities on a very short piece of that
18 time scale that we plan on. That's the reason why I
19 say I think things are by and large correctable.

20 THE CHAIRMAN: Thank you.

21 MS. SWENARCHUK: Q. I take it, Mr.
22 Scott, that in the normal course of timber management
23 planning you don't utilize the term eco-system with
24 great regularity. Would that be correct?

25 MR. SCOTT: A. Well, we have the forest

1 eco-system classification. No, I would say that we do
2 use the word eco-system commonly.

3 Q. All right. Do you agree that in the
4 courses that have been enumerated as being available to
5 forest planners, we don't see any reference to
6 eco-system based forest planning?

7 A. I think that's correct, the actual
8 term itself.

9 Q. Mr. Straight, if we look at page 99
10 of the witness statement and the considerations that
11 the Ministry looks at in determining provincial
12 guidelines.

13 My concern here is that the provincial
14 guidelines, I think we can conclude at this point,
15 provide the strongest protection for certain non-timber
16 values, certainly a stronger protection from my
17 perspective than the resource manuals or other types of
18 documents to which you have referred.

19 So if we look at whether provincial
20 guidelines will be developed, paragraph C on that page
21 indicates that one of the factors to look at is whether
22 the resource feature or value is commonly found across
23 a broad area of the province.

24 Now, doesn't that consideration then
25 exclude the possibility of developing provincial

1 guidelines for resources -- non-timber resources which
2 may be rare or only found in a few areas of the
3 province?

4 MR. STRAIGHT: A. Provincial guidelines,
5 that may.

6 Q. Yes.

7 A. But in saying that I think it is
8 important to recognize that in terms of provincial
9 guidelines and the way we have generally characterized
10 them has been in a reasonably holistic sense in terms
11 of commonly occurring to right the way through to our
12 responsibilities in terms of monitoring.

13 I don't think it is fair to say - and I
14 think I tried to stress in evidence yesterday - that
15 any one particular value that's raised at the level of
16 a timber management plan when compared against a
17 guideline value, so to speak, has to be weighed on its
18 own merits. And I think that is an important thing to
19 mention because we also recognize that there may not
20 be -- there may be other values that exist out there
21 for which MNR does not provide written direction right
22 now which may be of very high value and will require
23 protection.

24 And, in those particular instances, the
25 resource manager will have to call upon other experts

1 or experience or look to other avenues for assistance
2 rather than written direction from the Ministry as
3 well.

4 And if I could, just one other point to
5 make in terms of eco-systems. It is extremely
6 important to understand what we mean when we throw
7 around the word eco-system in a general context. But
8 clearly, most forest management principles, timber
9 management principles - if I could use the word
10 interchangeably in that context - timber management
11 principles are based on ecological concepts. In fact,
12 most of those, in terms of otocology of an individual
13 species, those principles are extremely important in
14 terms of a silvicultural sense.

15 What I hope you will see, Mr. Chairman,
16 throughout the presentation of evidence, particularly
17 through effects and, again, in terms of the monitoring
18 program is in many ways the way in which MNR has
19 approached those kind of broad environmental eco-system
20 type of concerns, if you will, that Ms. Swenarchuk has
21 raised.

22 THE CHAIRMAN: Ms. Swenarchuk, just going
23 to the point you just raised, whether the resource
24 feature or value is commonly found and that is one of
25 the criteria for it being the subject supposedly of a

1 provincial guideline.

2 Would not part of your concern be
3 addressed with the ANSI program or specific legislation
4 such as the Endangered Species Act or
5 the Migratory Birds Act or something like that, for
6 resources that are not commonly found throughout the
7 province?

8 MS. SWENARCHUK: Some of them may be, Mr.
9 Chairman, but if we consider for a moment the timber
10 management planning process, if a given resource value
11 were found on a given piece of land and had not been
12 designated as an ANSI and it was not an endangered
13 species, in our view, there is no assurance that that
14 resource value will be protected to the same extent as
15 if it were a value that were protected by a guideline
16 because the Ministry has said, even though there is
17 variation, the guidelines are mandatory, application of
18 the guidelines in timber management planning is
19 mandatory, application of the other sorts of manuals,
20 which I will discuss in a moment, are there for
21 assistance, there is a different level of protection.

22 THE CHAIRMAN: But I guess what I am
23 having trouble with is: Can you have a guideline that
24 will cover every single occurrence of something on a
25 specific site that may not be found elsewhere?

1 As soon as you find something like that,
2 would it be reasonable to conclude that a provincial
3 guideline should be established with respect to that
4 one thing, or should you not really be leaving your
5 guidelines for things that are found more commonly
6 across either the area of this undertaking dealing with
7 timber management across the province and try and deal
8 with the isolated instances through something else such
9 as an ANSI, or it may be caught by other legislation?

10 You are liable to end up with 1,500
11 guidelines for specific -- site-specific values.

12 MS. SWENARCHUK: Our concern, Mr.
13 Chairman, is that there may be 1,500 types of values
14 for which strong arguments can be made for protection,
15 whether the protective mechanism is a guideline or some
16 other mechanism, I think, is not a matter of great
17 concern to us.

18 The question is not whether it is called
19 a guideline, but the degree to which various resources
20 will be protected. And I think we can all discuss -
21 and we undoubtedly will as the case proceeds - what
22 types of protection could be devised. My concern here
23 is that these are the only three that are mandatory
24 and the ANSI program is limited.

25 THE CHAIRMAN: Okay. But is that not the

1 purpose of identifying areas of concern within the
2 planning process in the first place, to do just that,
3 to isolate and identify specific areas of concern that
4 may or may not be covered by a guideline but dealt with
5 specifically in the planning process?

6 MS. SWENARCHUK: In our view, the various
7 values which may be identified in the area of concern
8 process that are not subject to provincial guidelines
9 will probably, and according to Ministry policy, should
10 receive a lower level of protection than those to which
11 a guideline is going to be applied.

12 Yes, they will be identified in the
13 process. This is a key question with regard to the
14 whole area of concern process. I am glad to have you
15 talk about it.

16 THE CHAIRMAN: And is that not part of
17 the public's obligation to ensure to some extent that
18 these areas of concern are brought to the Ministry's
19 attention and are dealt with?

20 MS. SWENARCHUK: Two points. First of
21 all, the mere identification of a value as an area of
22 concern is no guarantee whatever of its protection; it
23 merely means that it appears on a map and gets
24 particular consideration in the planning process.
25 Whether that consideration results in protection is a

1 whole other question.

2 Secondly, I think you will hear evidence
3 later on about the degree to which the public can be
4 expected to identify all the other resource values on
5 the enormous scale of land that is involved in many
6 timber management plans.

7 Q. Could we look at pages 107 and 108 of
8 the statement of evidence.

9 MR. STRAIGHT: A. I have them, yes.

10 Q. Mr. Straight, at the bottom of 107
11 and the top of 108 we see the listing of what I
12 referred to as resource environmental manuals. Have
13 you had occasion to use these manuals personally?

14 A. Have I personally had occasion to use
15 them?

16 Q. (Nodding affirmatively)

17 A. I personally have had occasion to
18 use, in my previous capacity as a regional biologist in
19 the northwestern region, some of the guidelines, very
20 early guidelines developed for great blue herons.

21 I am familiar with the application of a
22 number of the others, but I have not had sort of
23 personal hands-on experience other than sort of an
24 auditing or an overview role.

25 Q. Can you confirm with any certainty

1 whether all of these guidelines and draft guidelines
2 are present in every district office in the northwest
3 region?

4 A. With a good deal of certainty I can
5 say that, because I specifically had that -- undertook
6 that request and was satisfied that that indeed was the
7 case. The only thing that always bothers me is my
8 memory level, but I am reasonably certain that is the
9 case.

10 Q. Mr. Scott, I see from your CV that
11 you have, during the 1980s, been in the Thunder Bay
12 District, the Ignace District, and the Fort Frances
13 District. Can you confirm for us that those guidelines
14 existed in all of those offices relative to the dates
15 when they were produced?

16 In other words, are these manuals really
17 there, are they used on a daily basis?

18 MR. SCOTT: A. I would be in the same
19 situation as Bill. I recall receiving most of the
20 guidelines as I go through names and I would have gone
21 through them myself as a timber management supervisor.
22 So I would say with reasonable certainty they are all
23 there.

24 Q. Okay. So it is your evidence then
25 that all of these manuals are used by the planning

1 teams in each district?

2 A. I recall when we were starting to
3 prepare for the Bright Sands timber management plan it
4 was John McNicol who served on the planning team and
5 you saw he was a witness here, it was his duty to
6 ensure that all those guidelines were delivered to the
7 company, Great Lakes Forest Products, prior to starting
8 the process of timber management planning.

9 Q. Okay. Mr. Scott, you were a unit
10 forester in the Thunder Bay District; were you not?

11 A. No, in Fort Frances.

12 Q. In Fort Frances. Do you recall
13 approximately what was the size of the land base you
14 were responsible for as a unit forester there?

15 A. Yes, I do. It was roughly a thousand
16 square miles.

17 Q. Right. And would you agree with me
18 that in general unit foresters are handling very large
19 areas of land?

20 A. Yes, I would agree.

21 Q. And within those areas of land there
22 may be tremendous variance in site-specific conditions?

23 A. Yes, I would also agree to that.

24 Q. And timber -- unit foresters are
25 quite busy people managing that scale of land; are they

1 not?

2 A. I would hope that I would have to
3 agree with you on that; yes, I would agree.

4 Q. And is it not quite difficult, simply
5 in terms of time, for the unit forester to arrive at a
6 knowledge of the site-specific details of that size of
7 land base?

8 A. If you are taking the land base as a
9 whole, yes, I would agree. There has to be a
10 commitment in time to get out to examine the
11 variability of sites.

12 If we are taking a look at the sites that
13 are undergoing timber management planning during --
14 when I was a unit forester, a five-year operating plan
15 period, I would say with the help of the technical
16 staff that are there, some of the other staff in the
17 district who have experience, one can become familiar
18 with the sites you are dealing with in a reasonably
19 short period of time as one field season would be an
20 adequate time period.

21 Q. Okay. Did you find that you had very
22 much time to read some of the other sources of data
23 that have been listed in this panel, such as the
24 scientific literature, for example?

25 I would assume that the unit forester

1 does not have a lot of time for additional reading
2 outside of the functions of his office?

3 A. It is hard for me to judge exactly
4 how much time, but I know I read things like the
5 Canadian Journal Forest Research, Forestry Chronicle,
6 Society of American Forestry Magazine.

7 I think I would keep -- do a fair bit of
8 reading in order to keep up with the science as a
9 practising forester.

10 Q. Highly commendable. If you look at
11 page 127 of the witness statement, which has to do with
12 the technology development unit, can you indicate what
13 mechanisms exist for the transfer of information from
14 the technology development units to the individual unit
15 foresters?

16 A. If I can just take a moment to look
17 through some of the material on technology development
18 units, or would you like a general --

19 Q. Would Mr. Straight be more familiar
20 with the material?

21 MR. STRAIGHT: A. I think you will find
22 that neither one of us are experts in terms of the
23 intricate workings of the unit -- the technology
24 development unit and I think we could probably try and
25 help you in a generalized context.

1 Q. My question specifically is: How is
2 that information made available to unit foresters?

3 A. If you look at the example that was
4 provided in the text, there is a fairly elaborate
5 committee structure, for one thing, that is set up to
6 administer the unit which includes scientific peer
7 review groups, as well as program groups within, for
8 example, the northwest region will have reference to
9 both the forest program, the fish and wildlife program
10 and the possibility for other types of involvement by
11 their staff in terms of the kind of work program for
12 the unit.

13 There is a link with each one of those
14 specific responsibilities in each of those committees
15 that have input to the unit back to the field
16 organization. Our regional biologist, for example, has
17 a regional fish and wildlife program committee, if you
18 will, that meet regularly throughout the year, that
19 involves both supervisors and other fish and wildlife
20 staff as may be required in terms of a rather constant
21 review of pending policies, program direction,
22 successive work that's achieved.

23 These committees, as a rule, meet at
24 least once every two months throughout the year and, in
25 many cases, even more frequently than that. They

1 also --

2 Q. Committees from the technology
3 development?

4 A. These are committees within our
5 existing organizational structure. The
6 representatives -- so when our regional biologist is a
7 representative on the TDU committee, he indeed is in a
8 position to form a link between the fish and wildlife
9 organization at the field level for which he has
10 constant communication and the programs of the
11 timber -- technology development unit.

12 The TDU -- and in terms of the actual
13 work program, that indeed is the flow. For example,
14 there is also reference in here to some moose work
15 that's being done in Fort Frances District that
16 involves at this particular point in time looking at
17 effects of different cutting patterns on moose
18 distribution.

19 The TDU is funding in part that program
20 and the way it got funded was the district raised it
21 within the regional committee structure to the regional
22 biologist. The regional biologist being a committee
23 member or representative on one of the TDU committees
24 promoted that as a particular project.

25 Now, that goes through a fair screening

1 process with a number of other projects that have come
2 up through the forest program.

3 Q. Can we just be -- I take it what you
4 are getting at then is that is the means by which the
5 knowledge --

6 A. The flow will go up and similarly the
7 flow can go back down in terms of the results.

8 Q. And does go back down to the district
9 level?

10 A. Yes, it does.

11 Q. That's fine. Thank you.

12 A. As well, there is also -- if there
13 are specific initiatives that the TDU program has
14 results on that it wants to communicate -- I mean,
15 these people very much then become a part of a
16 workshop, if that's the case.

17 For example, Jerry Racey who is a member
18 of the -- sort of the ecological representative, if you
19 will on TDU in the northwest unit, is one of the
20 individuals that will be sitting down with John Kenrick
21 reviewing our program for coordinating and training
22 relative to the provincial guideline.

23 So there tends to be a lot of feedback
24 and communication.

25 Q. Okay. Thank you.

1 MS. SWENARCHUK: Mr. Chairman, I wish to
2 file a number of interrogatories. Mr. Mander did not
3 have an exhibit number for them and indicated that I
4 should get that from you.

5 THE CHAIRMAN: Are you going to file them
6 as a package?

7 MS. SWENARCHUK: I think so.

8 THE CHAIRMAN: 388.

9 MS. SWENARCHUK: And the interrogatories
10 concerned are NOTOA, No. 26; Nishnawbe-Aski, No. 13;
11 OFIA, No. 4 and 6; and MOE, No. 4, 8 and 15.

12 MR. FREIDIN: What was the second one?

13 MS. SWENARCHUK: Nishbawbe-Aski No. 13.

14 MR. FREIDIN: Thank you.

15 ---EXHIBIT NO. 388: Interratories as follows: NOTOA
16 No. 26; Nishnawbe-Aski No. 13;
17 OFIA, No. 4 and 6; MOE, Nos. 4,
8 and 15.

18 MS. SWENARCHUK: Q. I want to refer you,
19 Mr. Straight, first of all, to the Interrogatory No. 26
20 from NOTOA which I assume is first on the page. Part
21 of the question was this:

22 "Has there been any research by the MNR
23 in the area of the value of tourism and
24 tourism resources. If so, how many
25 studies and please provide particulars."

1 And the second paragraph of the answer
2 indicates:

3 "As a general rule, MNR does not conduct
4 research into tourism economics nor are
5 we experts in this area."

6 Now, with reference to the tradeoffs that
7 occasionally must be made between timber values and
8 other values, would you agree with me that it would be
9 useful to the Ministry to have studies of tourism
10 economics or the socio-economics of tourism in a given
11 area in making a tradeoff between, if it has to be
12 made, tourism values and timber values?

13 MR. STRAIGHT: A. Yes, I would agree.

14 Q. Would you agree that it will be
15 useful?

16 A. Yes, I do.

17 Q. And if in fact, as the Ministry has
18 said here, these studies are not done, isn't there a
19 danger that in making those tradeoffs there is an
20 insufficient attention to the economic values of
21 tourism?

22 A. If you look at the way the answer to
23 the interrogatory is constructed, you will see: "As a
24 general rule MNR does not conduct research into tourism
25 economics."

1 And it is meant in that particular
2 context to mean essentially that in terms of marketing,
3 in terms of what attracts tourists here, in terms of
4 those kinds of studies and undertakings which more
5 appropriately are the role of the Ministry of Tourism
6 and Recreation.

7 Certainly we are interested in tourism
8 economics and, to some degree, we will collect that
9 information in a general sense when we are looking at,
10 for example, the fisheries value, and we will look at
11 general tourism economics to that the same way that we
12 would also consider the value of a commercial fishery,
13 the nature and perhaps even the value of recreational
14 angling.

15 Some of those types of studies and
16 reports are available for places like Lake of the
17 Woods. I don't want to misguide you, I don't think you
18 will find that that kind of information is necessarily
19 available on a local or specific nature all over.

20 The Ministry also conducts, for example,
21 a reasonably - not reasonably - regular surveys, for
22 example, of resident and non-resident anglers and that
23 non-resident angling component, for example, really
24 does provide economic information on that form of
25 tourism in Ontario.

1 Those are not meant to be all inclusive
2 and their primary purpose is to look at dealing
3 primarily with fisheries management issues.

4 Q. Okay.

5 A. But when we get involved at the local
6 of a timber management planning unit, we do deal with
7 MTR and we do request from them their information on
8 tourism economics.

9 I think, as both Mr. Clark -- Mr. Clark,
10 in particular referred to and if it wasn't him it was
11 Mr. Pyzer - depending on the nature of the decision and
12 the nature of the tradeoffs that are involved, we may
13 initiate studies to generate additional economic
14 information on tourism or on other particular values,
15 if that's required, to render a good decision in that
16 particular instance.

17 Q. Okay. Now, when you say that you
18 deal with MTR, does MTR have economic studies of the
19 tourism economics of all of the areas of the
20 undertaking?

21 A. I guess the degree of adequacy of
22 their information is something that MTR should respond
23 to. They --

24 Q. I am talking about its adequacy for
25 the purposes of your use of it in timber management

1 planning?

2 A. In the context where we need
3 information on a specific tourism operation or a number
4 of operations MTR, in my experience, have generated
5 that information for us to use in the planning process.

6 Q. Let me give another example of the
7 kind of information that I am concerned about and I am
8 not going to go into the details of the case, but for
9 example, in the Temagami example, there have been
10 suggestions that the long-term value of the land base
11 for tourism and recreation-related activities exceeds
12 its value for timber harvesting.

13 Now, without arguing about what is right
14 and wrong in the Temagami situation, I am asking
15 whether that kind of analysis is done routinely by the
16 Ministry in timber management planning; in other words,
17 do you look at the long-term values of the land base
18 for tourism and recreation broadly described as
19 compared to timber harvest?

20 A. It has been my experience that when I
21 have been involved in that kind of a decision, that I
22 will generate or have generated the economic
23 information that I need to make a decision, and also it
24 is also my own personal experience that, in considering
25 those tradeoffs, I have looked at the long term

1 relative to impact.

2 Perhaps I can give you some examples or
3 an example. If I get into a particular situation, as I
4 was for example in Wawa, where there is to be an access
5 road approximating a tourist outpost camp operation, I
6 would look at the additional costs of that particular
7 access road and alternatives and not only additional
8 costs of construction, for example, but I would also
9 ask the company for costs in terms of long-term wood
10 haul, costs of maintenance, so that there would be a
11 reasonable understanding of what those costs would be
12 to the timber industry.

13 Now, depending on the alternative that
14 would be selected in that particular instance, there
15 would be differing impacts on that tourist operation.
16 If the access was virtually within 120 metres or
17 whatever of the lakeshore, it is likely that that
18 remote operation would not continue to exist and other
19 options that were further away, it probably would be
20 reasonable to expect that it could continue at varying
21 levels of impact to which your knowledge of how the
22 local angling public's reaction to that kind of
23 situation would help you in making that kind of a
24 judgment.

25 When looking at the economic value of

1 that tourist camp I know I have personally said: Well,
2 if that camp continues to make -- to render -- to
3 generate revenue and to generate both economic benefits
4 to the community and social benefits in terms of jobs,
5 that opportunity probably can exist for an awful long
6 period of time because -- and look at it within the
7 time frame that it would take for that road to go in
8 and out of production, for example.

9 So you do look at it over the long term
10 and you do try and make a judgment call based on
11 long-term economics.

12 Q. I take it that is your own estimate
13 of the long-term economics; is it?

14 A. That would be my estimate with the
15 help both of the timber industry in that particular
16 case and the tourist operator with MTR's assistance at
17 times.

18 Q. Okay. Looking at the Nishnawbe-Aski
19 Nation Question No. 13(c) -- before I go on with
20 that...

21 MS. SWENARCHUK: Mr. Freidin, I wonder if
22 you could undertake to provide me with the Lake of the
23 Woods studies to which Mr. Straight referred?

24 MR. STRAIGHT: I believe that was filed;
25 was it not, Mr. Freidin?

1 MR. FREIDIN: It was filed by Mr. Monzon
2 in Panel No. 1.

3 MS. SWENARCHUK: All right, thank you.
4 Okay.

5 Q. Okay. Turning to the Nishnawbe-Aski
6 Nation Question No. 13(c) and this is again with
7 respect to the resource manuals. 13(c) says:

8 "Are these documents considered part of
9 this Environmental Assessment?"

10 And the last line of the sentence in response indicates
11 that:

12 "MNR is not seeking approval of these
13 documents as part of the Environmental
14 Assessment."

15 And perhaps this is more a question for Mr. Freidin.

16 MS. SWENARCHUK: What exactly do you mean
17 when you indicate that you are not looking for approval
18 of the documents, Mr. Freidin?

19 MR. FREIDIN: What it means is that the
20 proponent is not seeking an order of this Board that
21 they approve the contents of those guidelines or those
22 manuals. The position of the proponent is that those
23 guidelines and resource manuals must be dealt with in a
24 fashion which will allow them to, in fact, be varied as
25 science and technology develop; and that to make them

1 subject to approval would have the result of every time
2 one wanted to update one of those manuals or
3 environmental guides would require an application in
4 some way to do so and an application to the Board or to
5 the Ministry of the Environment.

6 And the Ministry of Natural Resources
7 does not believe that that is the common practice in
8 relation to these sorts of matters and, therefore, take
9 the position as I have stated.

10 THE CHAIRMAN: So is it your position
11 that at the time this Board looks at the Environmental
12 Assessment application before it, it can express no
13 opinion on the content of the resource manuals which
14 contain information upon which MNR relies in the course
15 of its timber management planning process?

16 MR. FREIDIN: No. Obviously you can have
17 recourse to those documents and the witnesses will be
18 referring to them to indicate to you how they use those
19 guidelines.

20 I think in the context of the Class
21 Environmental Assessment, if the Board was satisfied
22 there was something in one of those guidelines which,
23 in every case, was just not a good thing to do, you
24 know, completely inadvisable, then I think to that
25 extent the Board may want to so indicate in their

1 decision and make some comment on whether that
2 particular practice would be appropriate.

3 THE CHAIRMAN: And is it your position
4 that the Board cannot deal with any of the manuals in
5 terms of conditions of approval?

6 MR. FREIDIN: I have great difficulty
7 answering that question in the abstract, Mr. Chairman.
8 I think I would have to really address that particular
9 concern in light of the actual term of condition that
10 may be considered.

11 THE CHAIRMAN: Well, I guess what the
12 Board would like to ascertain at this point is just how
13 far off limits, at least in your submission, are these
14 manuals relative to the Board's decision and conditions
15 of approval, and that is not to say that the Board will
16 agree necessarily with your submission.

17 MR. FREIDIN: Well, I have...

18 THE CHAIRMAN: Perhaps -- well, after you
19 are through, perhaps we might ask Mr. Campbell if he
20 would like to comment on that question as well.

21 MR. FREIDIN: I have the same difficulty
22 responding to that question as I did to the one you put
23 before. I think, as I have indicated, it is my
24 understanding that construction manuals and those sorts
25 of things are expected to be left after an

1 Environmental Assessment in terms of their status in a
2 state or in a status or have a status which allows
3 scientific advances, technological improvements to, in
4 fact, be incorporated into the current and normal
5 practice of the proponent.

6 And, as I have indicated, I guess in a
7 general way I don't believe -- or my submission that
8 the Board should not deal with these manuals and
9 guidelines in such a way as to affect the ability of
10 the proponent to in fact follow that form of practice.

11 THE CHAIRMAN: Well, let's hear from Mr.
12 Campbell and see if, from his Ministry's perspective,
13 that is the view as well.

14 Excuse me, Ms. Swenarchuk, we might as
15 well deal with this now before you get into a lot of
16 questions.

17 MR. CAMPBELL: Thank you, Mr. Chairman.

18 Our view and submissions on this matter
19 are fairly straightforward and I believe support the
20 view of the Ministry of Natural Resources.

21 It is my client's submission that the
22 Board has complete and unfettered discretion to impose
23 terms and conditions which address matters which are
24 also addressed in these resource manuals and
25 implementation manuals, all the various

1 classifications, if it feels that there is a term and
2 condition which is necessary to achieve an appropriate
3 litigation or avoidance of environmental effect in the
4 carrying out of timber management.

5 It is also our position that the Board
6 has in front of it an application which contemplates
7 that all of these manuals will be used in timber
8 management planning and it is appropriate to put in a
9 term and condition which states that the undertaking
10 will be carried out in accordance with the
11 environmental assessments and, therefore, in accordance
12 with the various manuals, et cetera, that are relied on
13 by the proponent in that Class Environmental
14 Assessment.

15 We also take the position that those
16 manuals should be used, if you like, as amended from
17 time to time. It is quite clear - and certainly the
18 witnesses on this panel have been perfectly frank about
19 the fact - that there is a great deal of uncertainty
20 with respect to many of the effects that are being
21 discussed and that the guidelines are a compilation of
22 professional expertise and judgment and represent, if
23 you like, the best state of knowledge at this time as
24 to how to avoid those effects. They are being put
25 forward that way by the proponent; but that as

1 monitoring and research continues, as is also proposed
2 by the proponent, those guidelines should be able to be
3 modified to accomodate that new knowledge.

4 And to use my friend Mr. Cosman's example
5 from this morning, it is quite conceivable that those
6 guidelines could be amended in ways which would both,
7 for instance, widen or reduce the reserves for instance
8 around certain types of water courses depending on the
9 actual results of the research. It is important, in my
10 client's submission, to maintain that kind of
11 flexibility in an on-going way.

12 At some point a change, I assume, in the
13 way operations were being conducted would reach a level
14 of significance that required an amendment to the Class
15 EA and we will be supporting a reasonable amendment
16 procedure to be in place during the course of the
17 approval prior to the regular review that is usually
18 contemplated by a Class EA.

19 I think that gives general overview of
20 the position that we will argue on this matter and I
21 don't believe it is inconsistent in any respect with
22 the position that is being taken by the Ministry of
23 Natural Resources.

24 THE CHAIRMAN: Okay. One last follow-up
25 to that, Mr. Campbell. Would it be, in your opinion

1 and that of your client, in the purview of the Board to
2 comment on the way in which any of the manuals should
3 be reviewed and/or updated as part of this overall
4 Class Assessment?

5 In other words, we have heard that they
6 should be subject to flexibility in terms of being able
7 to keep up with science as it develops, et cetera, and
8 when the uncertainties become less certain -- or more
9 certain rather, but should the Board also be concerning
10 itself with, in terms of an overall planning process, a
11 methodology by which the manuals themselves can be
12 updated or should be updated?

13 In other words, who should be consulted,
14 what kind of input should there be to a review process
15 of the manuals themselves, that kind of thing?

16 MR. CAMPBELL: Well, I think that kind of
17 concern is one that has been raised, you have seen it
18 raised today, and that it is one in which quite frankly
19 I don't see there being a lot of dispute amongst the
20 various parties before the Board. I think the
21 proponent has expressed a willingness to involve
22 various parties in the review and the exact mechanics
23 of that, I expect they will have some suggestions on
24 all of that.

25 However, I think it is also fair to say

1 that the time frame both for effects monitoring, again
2 as we have heard in evidence today, and for this review
3 is not -- it is not a very site-specific project that
4 it goes in, bang, it is done, move on, and I think
5 those kinds of questions are appropriate kinds of
6 questions to ensure are addressed in what is called the
7 five-year review of a Class EA.

8 The Board may well wish to satisfy itself
9 that that kind of effort is being put into the
10 five-year review and that is a matter on which you will
11 hear questioning from us at an appropriate time in this
12 hearing.

13 MRS. KOVEN: But what you are saying, Mr.
14 Campbell and Mr. Freidin, is that essentially the
15 guidelines and the manuals are presented to the Board
16 as a fait accompli; in fact, regardless of what we
17 think their role may be in the EA process and they
18 exist and they will continue to exist regardless of the
19 decision that we make.

20 MR. CAMPBELL: I don't think I said
21 anything that could be construed as saying that
22 guidelines are a fait accompli. I think what I have
23 said is that the Board has a complete and unfettered
24 discretion to express any view it wishes on the
25 efficacy or otherwise of those guidelines in achieving

1 the objectives of environmental protection.

2 What I do say, though, is that the simple
3 practical reality of the matter is that to say these
4 are the guidelines for now and for all time will, in
5 our submission - it is only our submission - would be
6 an inappropriate result, that we do take the position
7 that it has to be recognized that the science does
8 evolve, the technology does evolve, and we all bring
9 here a view that there has to be a mechanism for
10 reflecting that updated knowledge, changes in
11 technology, et cetera into the various guidelines and
12 manuals under which timber management is carried out.
13 And I think that view is shared from the view of the
14 industry, shared certainly by MNR and it is shared by
15 ourselves.

16 We all bring a different perspective to
17 that question, but I think the essence of that
18 submission is the same and I couldn't - to come back to
19 where I started - I couldn't disagree more strongly
20 with any characterization of that as a fait accompli.
21 We do not see it that way.

22 MRS. KOVEN: I guess if I thought that
23 through sort of in a very far-fetched way, I might say
24 that the Board might be put in the ridiculous position
25 of turning down the EA because in fact we didn't have

1 any confidence that the guidelines procedures as they
2 were set up and might be amended would be satisfactory.

3 MR. CAMPBELL: I suspect at the end of
4 the day our submission will be that that is indeed a
5 far-fetched result, but it is not a theoretically
6 impossible result.

7 THE CHAIRMAN: Thank you, Mr. Campbell.

8 MR. COSMAN: Mr. Chairman?

9 THE CHAIRMAN: I see we have stirred the
10 juices out there of several of the counsel.

11 MR. COSMAN: Since you have invited
12 submissions from several parties - and I won't be very
13 long - I just want to say...

14 THE CHAIRMAN: Do we extend to you an
15 invitation, Mr. Cosman?

16 MR. COSMAN: I presume, Mr. Chairman,
17 that you quite fairly extended an invitation to all
18 parties.

19 THE CHAIRMAN: Go right ahead.

20 MR. COSMAN: We will not be making
21 submissions at this time. I just want to make it very
22 clear that we are reserving our position in respect of
23 any proposed conditions that may be made. Of course,
24 you are not making a decision at this time so it is not
25 necessary.

1 THE CHAIRMAN: Well, thank you. The only
2 reason we raised it in the first place was to see at
3 this stage how far we are going to get into questioning
4 along the lines of Ms. Swenarchuk initially started
5 upon. So I think we have got...

6 MS. SWENARCHUK: Meaning questioning of
7 the relationship of these manuals to the EA?

8 THE CHAIRMAN: That's right.

9 MS. SWENARCHUK: I am glad you cleared
10 that up, Mr. Chairman.

11 THE CHAIRMAN: I am not sure we cleared
12 it up.

13 MS. SWENARCHUK: Exactly.

14 THE CHAIRMAN: But, in any event, proceed
15 along that line, if you so choose.

16 MS. SWENARCHUK: Mr. Chairman, with
17 respect to the question of the application or the type
18 of application of each of the provincial guidelines, I
19 don't plan to pursue the other matter any further at
20 this time.

21 I am filing with you the interrogatory in
22 response OFIA No. 6. I don't plan to discuss it with
23 the witness at this time, but I think it is a useful
24 characterization, from the Ministry's perspective, of
25 how the guidelines will be applied, in the response

1 that is, flexibility and discretion and the variation
2 amongst the guidelines.

3 MR. FREIDIN: If I just might, Mr.
4 Chairman. OFIA No. 6 was part of Exhibit 383B. I
5 filed that.

6 MS. SWENARCHUK: Well...

7 THE CHAIRMAN: Well, we will leave it as
8 part of this package as well, Mr. Freidin. I don't
9 think it matters if it has got two numbers.

10 MS. SWENARCHUK: Q. I guess I will put
11 the next question to Mr. Straight and this is with
12 regard to Ministry of Environment Question No. 4, it is
13 also part of this package.

14 What evidence is available to MNR to
15 evaluate whether compliance with decisions made through
16 the use of the guidelines will result in the objectives
17 of the guidelines being met?

18 And in summary the Ministry includes the
19 results of scientific literature, pure scientific
20 review and provincial stakeholder development and
21 review. You would agree with me, Mr. Straight; would
22 you not, that that does not appear to include any
23 quantitative evidence?

24 MR. STRAIGHT: A. And what exactly do
25 you mean that it does not include any quantitative

1 evidence. And I mean in the sense that in reviewing
2 the results of scientific literature there would have
3 been a quantification of effect that was seen as a
4 result of a specific study. Certainly in that sense
5 there is a quantification.

6 In terms of dealing with the broad
7 principles of how the effect might occur throughout a
8 general range of environmental or socio-economic
9 circumstances, there is not a quantification in terms
10 of being able to apply a generalized rule or formula
11 that will fit in every situation.

12 But on a case-by-case basis, there is a
13 quantification normally of some sort.

14 Q. What do you mean by case-by-case
15 basis?

16 A. Well, for example, if in a specific
17 study...

18 Q. You are referring now again to the
19 scientific literature?

20 A. I am talking about science and that
21 is in many ways what the quantification aspect refers
22 to is to the results of scientific study and the
23 ability to be able to predict impacts on natural
24 resources or the environment as a result of those
25 studies or types of studies.

1 And I would -- and any one study does
2 have quantification associated with it, but in the
3 sense that any one study only deals with part of the
4 broad environment that one needs to study to come up
5 with general scientific rules and principles, there is
6 a lack of quantification, yes.

7 Q. All right. If we can look now at
8 Ministry of the Environment Question No. 8 which has to
9 do with the role and responsibility of the regional
10 silviculturalist.

11 Is this a position with which you are
12 familiar, Mr. Straight?

13 A. I am broadly familiar with that
14 position.

15 Q. Now, attached to the response is the
16 job description for a regional forestry specialist
17 silvicultural for northwestern region and something
18 called the regional silvicultural specialist for
19 Algonquin region.

20 Now, in both cases it is my view, in
21 reviewing the job description, that these individuals
22 are engaged in post-cut regeneration activities, but I
23 do not see any indication in the job descriptions that
24 these individuals have any involvement in determining
25 the type of harvest that will occur and together with

1 that the type of regeneration as an integrated step;
2 that is, harvest and regeneration together.

3 It appears to me that their duties are
4 confined to post-harvest decision-making; is that
5 correct?

6 A. I can't personally respond to that
7 question for you on the basis of my experience.

8 Q. Mr. Scott, could you help us with
9 that?

10 MR. SCOTT: A. In just going through the
11 job specification for the regional silviculturalist in
12 Algonquin region, I see the first summary of duties or
13 responsibilities under No. 1 such items as developing
14 silvicultural growth and productivity models,
15 developing and implementing site and productivity
16 classification mapping systems, documenting appropriate
17 silvicultural systems to stand and site conditions, to
18 provide guidelines to management staff.

19 Things like that do not necessarily
20 relate to the post-cut situation. We may be relating
21 to an immature stand that we want to do some thinning
22 on, that we want to bring it under some form of
23 management for the future. I am just picking out three
24 right now.

25 Q. So those specialists are involved

1 then in harvesting technique determination as well; are
2 they, the determination of harvesting techniques?

3 A. It is a broad range job that regional
4 silviculturalist, yes, they are involved in the
5 harvesting technique and the silvicultural decision
6 that is part of the harvesting decision, but they are
7 also involved in silvicultural decisions in the uncut
8 stands as well and monitoring - or I shouldn't say
9 monitoring - I should say developing things like site
10 productivity models, et cetera, for it.

11 Q. Okay. That is what I wanted to know.

12 MS. SWENARCHUK: This might be an
13 appropriate time for a break, Mr. Chairman.

14 THE CHAIRMAN: Okay. We will break for
15 15 minutes.

16 Thank you.

17 ---Recess taken at 3:20 p.m.

18 ---Upon commencing at 3:35 p.m.

19 THE CHAIRMAN: Thank you. Be seated,
20 please.

21 MS. SWENARCHUK: Q. Mr. Straight, could
22 we turn now to the Tourism Guidelines, please.

23 MR. STRAIGHT: A. That was to the
24 Tourism Guidelines?

25 Q. Right. Now, if we look at page 13 of

1 the guidelines, Mr. Straight, we see in the second full
2 paragraph of the page:

3 "Figure 3 presents the broader picture of
4 the recommended process by which a
5 resource manager should work with the
6 tourist operator in reaching a consensus
7 on the most appropriate decisions to
8 make."

9 Now, will you agree with me that the
10 approach used for tourism values protection here has to
11 do with discussions among the industry, the Ministry
12 and the forest -- the tourism industry, the Ministry
13 and the forest industry in order, as it says, to reach
14 a consensus about what approach will be used by the
15 forest industry?

16 And - let me just finish - the manual
17 does not prescribe procedures to be used in any
18 particular circumstance?

19 A. I believe you are right, the manual
20 does not prescribe specific procedures; it prescribes a
21 general direction in terms of negotiating -- or
22 discussion, that sort of thing, and negotiation in the
23 attempt to reach consensus on where to go.

24 If you look at that diagram on page 12,
25 though, it does suggest that consultation includes

1 others than just the tourist industry and the timber
2 industry--

3 Q. Granted.

4 A. --in any particular case.

5 Q. Granted. Would you agree with me
6 that this manual does not include any particular
7 prescriptions such as exist in the fisheries habitat
8 protection manual, for example, regarding
9 slope-dependent decisions about reserves around
10 particular lakes and streams?

11 A. I would agree that there is -- the
12 type of direction is not that specific.

13 Q. Now, can you -- I think the Board
14 will hear evidence about instances in which a lack of
15 consensus occurs. Can you tell us what the process
16 should be or is for protection of tourism values when
17 it is not possible for the parties to reach a
18 consensus?

19 A. I can perhaps best deal with that by
20 giving you an example in northwestern Ontario that came
21 up not that long ago, where basically the district had
22 worked with a tourist operator - I might add one
23 tourist operator, in this case, of a number of tourist
24 operators in the particular area - it was quite a large
25 lake.

1 The situation was that there would be
2 basically secondary and tertiary -- particularly
3 tertiary access roads accessing, coming close, in the
4 vicinity of the main lake and also a number of smaller
5 lakes off the main lake that this particular tourist
6 operator used to take his guests. When fishing would
7 be slow on the big lake, they had access to these
8 smaller ones as well.

9 And the district, in this particular
10 instance, really worked with the company in terms of
11 developing shoreline reserves, scenic reserves, that
12 sort of thing. And, in each case where there was a
13 potential for access to the water body, the district
14 were prepared with the timber industry to implement
15 controls in their assessment that they felt would have
16 been effective in minimizing and even going so far as
17 perhaps preventing access, and these included winter
18 operations, for example, in areas over which you can
19 build roads in the winter on frozen ground which become
20 bog-like in the summer and restrict travel.

21 They called for posting under the Public
22 Lands Act of operations while timber management
23 operations were ongoing and subsequent removal of
24 culverts, for example, so that access would be
25 discouraged thereafter and this whole process occurred

1 with -- over a reasonably lengthy period of time and
2 with a lot of consultation.

3 The tourist operator was not satisfied
4 that that was going to be acceptable, he was still
5 concerned -- they were concerned - it was a man and
6 wife situation - that their operation would still be
7 impacted so they raised the issue in northwestern
8 Ontario to the Kenora District Camp Owners Association,
9 which is an affiliation of NOTOA, the Northern Ontario
10 Tourist Operators Association, and they requested
11 intervention at the regional level.

12 And so part of my responsibilities, in
13 concert with MTR in this particular case I might add,
14 we called both the timber companies and the district
15 staff and the tourist operators together to see if we
16 could, to some degree, satisfy the individual that we
17 felt that this was going to work.

18 The meeting resulted in essentially an
19 agreement by MNR to go one step further to the degree
20 that I indicated earlier, that when we come up with a
21 prescription in a timber management plan and we have
22 reviewed that publicly, in my interpretation, that's a
23 commitment we should try and honour to the degree that
24 it is reasonable that we do so.

25 And, in this particular case, the

1 district were prepared to say: Look, if access was
2 becoming a problem from some of these roads, that the
3 district would take additional measures to do
4 something, to control or prevent that. But the
5 district felt very satisfied, on the basis of their
6 experience, that it would work.

7 The individual tourist operator was still
8 not satisfied that that was going to work and, in the
9 final analysis, the local district had to make a
10 decision on the way to go and the decision that the way
11 to go was what they originally prescribed plus
12 basically the additional -- the results of the other
13 meeting that we had where they agreed to take
14 contingency action should measures fail.

15 And that was the decision in that case
16 that was rendered in the plan.

17 Q. And would you agree that that is a
18 fairly common process?

19 A. In my experience that's a common
20 process.

21 Q. If consensus cannot be reached the
22 district or region will make a decision and it will be
23 imposed on the plan?

24 A. In saying that, you have to recognize
25 as well that we pay district managers to exercise good

1 judgment in making decisions. There may be situations
2 where the ramifications of the effect are significant
3 at a very broad level. Where --

4 Q. Mr. Straight, I am only concerned
5 with how those guidelines operate as opposed to, for
6 example, how the Fisheries Guidelines operate. I
7 merely want to clarify --

8 A. That's the principle on which the
9 guidelines operate, yes.

10 Q. If a consensus is not reached, the
11 Ministry is going to make a decision and it is going to
12 go with that decision and the tourist operator may like
13 it or not, but he doesn't have something analogous to
14 the fisheries protections giving him specific rights to
15 protection?

16 A. Specific rights to protection?

17 Q. He has -- under the guidelines he has
18 a process to reach consensus, if no consensus is
19 reached, he is going to have to live with the
20 Ministry's decision?

21 A. In general, you are correct.

22 Q. Could you turn now to page 19,
23 please, of the document. Now, at the top we are
24 talking here about tourist roads and the first sentence
25 on page 19 says:

1 "Roads designed only for timber access or
2 occurring within forest management
3 agreement areas are not included."

4 Presumably that means they are not included as tourist
5 roads. Page 19 of the --

6 A. Yes, I have it.

7 Q. Right. Do the guidelines in general
8 apply to decision-making on forest management agreement
9 areas?

10 A. In general they do, yes -- or they
11 do, yes.

12 Q. Do they apply in general to road
13 building on FMAs?

14 A. They apply to road building in
15 FMAs -- well, let me see. My reading of the definition
16 here specifically tries to separate those roads which
17 are constructed for forest access purposes right now
18 and those roads which exist which are -- which have
19 basically an existing tourism value.

20 Q. I agree, Mr. Straight.

21 A. And in the context of the definition
22 I would say that, yes, they do apply to forest
23 management agreement areas. There may well be those
24 roads, as defined in this document, which constitute
25 the definition of a tourist road.

1 Q. Let me just summarize my
2 understanding of this: That this particular
3 description, tourist roads, does not apply to roads
4 built within FMAs, however, the guidelines overall do
5 apply to the planning of roads including roads within
6 FMAs; is that correct?

7 A. I am sorry, it must be getting late,
8 I lost you.

9 Q. I will try it again. Roads built for
10 forest access purposes on FMAs are not tourist roads
11 within the paragraph 2.1.4 in the guidelines?

12 A. In a general sense I would agree with
13 you, yes.

14 Q. Now, my question is: Do the
15 guidelines for tourism protection overall apply to
16 planning -- forestry planning on FMA areas?

17 A. The guidelines for tourism generally
18 do apply to forest management areas -- agreement areas.

19 Q. Thank you. Now, if we look at page
20 20, at the bottom of the page we see a heading 2.1.8
21 Asset Protection, and I think that the following
22 paragraph indicates the purposes of these guidelines
23 and; namely:

24 "To protect tourism values for commercial
25 tourism operators."

1 Would you agree?

2 A. Tourism values did you say?

3 Q. For commercial tourist operators.

4 A. I would agree that you are generally
5 correct, yes.

6 Q. And would you agree that there is no
7 protection in these guidelines for non-commercial
8 tourist values and recreation values?

9 A. What is a non-commercial tourist
10 value?

11 Q. That's a person going on Crown land
12 for canoeing or hiking or whatever, who does not pay a
13 commercial tourist operator.

14 A. The guidelines are intended for
15 general use here to be applied to tourism values.
16 Those tourist interests, in the sense that they attract
17 canoeists, hikers, that they may attract nature
18 viewers, to that degree certainly do represent an
19 attempt to protect those kinds of values.

20 And, in a general sense, I would say that
21 those types of concerns, particularly as they relate to
22 aesthetics and types of cutting, can and are considered
23 here.

24 Q. Well, in that case, Mr. Straight, it
25 was my understanding that the purpose of these

1 guidelines was oriented strictly to the protection of
2 investment by tourist operators in tourist values
3 operations, and that it was for that purpose that a
4 consensus process was set up between the Ministry and
5 the forest industry and those tourist operators and, in
6 addition, that it was for that reason that the groups
7 consulted in drawing up these guidelines were the
8 Ministry of Natural Resources, the Ministry of Tourism
9 and Recreation, the forest industry and the tourism
10 industry.

11 And are you now indicating that this as
12 well is Ministry policy for the protection of
13 non-commercial recreation values?

14 A. I guess my problem here, Ms.
15 Svenarchuk, is that it is to some degree difficult to
16 separate in all cases between a non-commercial value
17 and a general recreational value. Much of our tourist
18 industry is dependent upon those general recreational
19 values that you are talking about.

20 Tourist industry concerns for scenic
21 waterways, for scenic sites and vistas around lakes,
22 for aesthetics at shore lunch sites, for aesthetics of
23 roadsides, for aesthetics of other special natural
24 features within the areas of their camp is of concern
25 to the tourist industry.

1 At the same time, I don't want to mislead
2 you, you are right, those values, in the sense that
3 they are identified by the tourist industry, do indeed
4 come under the general guise of aesthetics protection
5 in this -- come under the guise of protection of
6 aesthetics as a result of using these particular
7 guidelines. There may also be other remote wilderness,
8 if you will, aesthetic types of considerations that are
9 raised by others and, to the degree that these
10 guidelines relate to those remote features, they as
11 well can be used to protect those guidelines.

12 But, in the same regard, I would say as
13 well that, in a general sense for example, a canoe
14 route would not necessarily be protected by this
15 process but rather, for example in terms of a canoe
16 route, would be recognized an existing -- in the
17 district's existing inventory of information and come
18 forward to the planning process by that mechanism.

19 Q. Right. And it would not necessarily
20 be subject to these guidelines unless a specific
21 tourist operator said: I am concerned about the
22 preservation of values on this particular --

23 A. No. Normally in the case of a canoe
24 route, that very specifically would be raised by the
25 district as part of its existing inventory and would

1 receive aesthetic protection within that context as its
2 own value. That's my experience.

3 MRS. KOVEN: Mr. Straight, haven't we
4 heard before that in some situations - and you might
5 want to say that those are the fewer situations - in
6 some situations isn't that the case that local
7 recreational use is in fact oftentimes in conflict with
8 commercial tourism and usually by means of access?

9 MR. STRAIGHT: I would say that quite
10 often arises, yes.

11 MRS. KOVEN: So in fact this guideline
12 isn't covering the protection of recreational use in
13 that sense and it couldn't be grouped into...

14 MR. STRAIGHT: That would not -- this
15 particular guideline, in terms of the need for
16 remoteness than aesthetics, is not normally raised by
17 the local angling and hunting fraternity, no. No,
18 normally they after additional opportunities to access
19 those fish and wildlife resources.

20 MS. SWENARCHUK: Q. Let me ask this
21 question another way: You have been qualified as an
22 expert in resource management. Are you aware of
23 guiding policies within the Ministry for the protection
24 of recreational values on Crown land aside from this
25 manual?

1 MR. STRAIGHT: A. Recreational values on
2 Crown land?

3 Q. Non-commercial tourism.

4 A. Now, does that include angling values
5 as a recreation, is that...

6 Q. Yes, but it could also include
7 hiking, canoeing, camping, activities that people carry
8 out on Crown land without paying a commercial operator
9 in the process.

10 A. And you specifically would like to
11 know whether the Ministry has policies regarding those?

12 Q. That's right. For example - maybe
13 this would be of assistance to you - if you look at
14 page 41 of the document.

15 And, again, I must stress frankly I am
16 surprised that the position now being taken that these
17 guidelines apply to non-commercial tourism as well,
18 particularly because throughout the guidelines this
19 process of consensus-reaching between the forest
20 industry, the tourism industry and the Ministry is
21 discussed and I was not aware that really these
22 guidelines were in any way directed towards tourism
23 values outside of those.

24 If we look at page 41 we see again the
25 first paragraph:

1 "This section will deal with the methods
2 available to control public access in
3 areas of concern for those cases where a
4 consensus has been reached that such
5 controls are necessary."

6 Again, we talk about the consensus. Then we see:

7 "The Ministry of Natural Resources may
8 approve the creation of an official
9 public access point on a lake under
10 certain conditions where..."

11 And the first point is:

12 "Such an access point fulfills
13 Ministry recreational planning
14 objectives."

15 So that it is my next question: What are the
16 Ministry's recreational planning objectives? Is this
17 an area where we are dealing with non-commercial as
18 well as commercial tourism?

19 A. I think that's an example of a
20 situation where we are giving into that kind of a
21 situation.

22 But again, before I perhaps continue, I
23 don't want to mislead you. You are right in the sense
24 that my understanding is these guidelines are developed
25 primarily to deal with tourism operational facilities,

1 But we also have to recognize that in the real world
2 out there those tourism concerns that come to my
3 attention go beyond the actual site of the lodge or the
4 remote outpost camp itself.

5 Q. Right.

6 A. They do raise concerns on roads, they
7 do raise concerns on canoe routes, they do raise
8 concern of aesthetics and remoteness in a broad number
9 of areas.

10 And I simply wanted to make the point
11 that, to the degree that we can use the guidelines here
12 to protect those guidelines and we do, in protecting
13 those we would also, in many cases, be dealing with
14 those concerns of the general recreationists who would
15 also have it.

16 Q. I can see that.

17 A. Now, in terms of -- it has also been
18 my experience in terms of dealing both within
19 negotiating FMAs back in Wawa and also in looking at
20 the results of planning exercises by staff that some
21 scenic -- some recreational, pure recreational concerns
22 such as canoe routes are routinely identified within
23 the timber management planning process and routinely
24 are dealt with in terms of prescriptions to minimize,
25 mitigate or prevent effects.

1 Q. Prescriptions consistent with this
2 manual; prescriptions derived from the examples given
3 in this manual?

4 A. Prescriptions whose intent it was to
5 reach the same objectives as defined in this manual.
6 Whether or not there are a number of examples here, I
7 am sure, I guess, if you were to look at life out there
8 you would find some example to specifically fit.
9 I just...

10 Q. Again, I am just trying to clarify
11 how it is used. So can you tell me using those now
12 non-commercial examples that you have raised, canoe
13 routes for example, when you plan for them in the
14 planning process, do your planners use these guidelines
15 to determine how they are going to be treated?

16 A. The planners would use these
17 guidelines.

18 Q. Fine.

19 MR. MARTEL: Can I ask a question.

20 Do you put those together in any type of
21 manual that is used across the whole area of the EA,
22 for example, again using the guideline idea that they
23 are not that rigid but, in fact, you use this as a
24 basis to work from?

25 And are these put together so people can

1 look at them?

2 MR. STRAIGHT: If I understand your
3 question correctly, you are asking if there has been an
4 attempt to put together general sets of examples and
5 direction to help in resolving those kinds of aesthetic
6 concerns and I guess my immediate response to that
7 would be that this document would serve that purpose.

8 That this tourism guideline document
9 would in the sense that the aesthetics that are of
10 concern to guests of the tourist industry are, in many
11 ways, the aesthetics of concern to Ontario
12 recreationists as well.

13 MS. SWENARCHUK: Q. Isn't there a major
14 gap in the manual then, Mr. Straight, if there is no
15 reference to this consensus negotiation process
16 involving other than the tourism industry on the
17 recreational value side?

18 MR. STRAIGHT: A. The consensus -- if
19 you go back again to that diagram that you had me look
20 at on page 13 -- I believe it was page 13.

21 Q. I was looking at the wording by
22 which--

23 A. Page 12.

24 Q. --the process is described throughout
25 the manual.

1 A. And I did indicate to you that, in
2 general, that's exactly the way the process works and,
3 in general, you are normally dealing with, on any one
4 specific situation, probably a limited number of
5 actors. There is an opportunity for other participants
6 or other interests to become involved in the process.
7 And the example you alluded to on page 41 dealing with
8 access point requirements, for example, might be a
9 perfect situation to deal with that.

10 There are cases that come up in timber
11 management planning where a tourism resource is
12 involved and we have actively sought the participation
13 of the local recreational fraternity to assist in
14 deciding how it is they want to achieve what their
15 needs or wants from that particular area as well.

16 Our fisheries plans, for example, that
17 are in existence in the northwest region right now very
18 specifically look at general objectives or fisheries
19 strategies for that area which include both the needs
20 for tourism as well as the needs, for example, of local
21 recreational anglers. In your context, there is some
22 direction that's provided to that particular -- to the
23 resolution of that particular issue.

24 Q. Can you help me with this: What are
25 Ministry recreational planning objectives? Do they

1 exist at provincial level, district, regional level;
2 what are they as referred to in that paragraph?

3 A. My context in -- the degree to
4 which -- oh, what is the best way to go with this.

5 Those recreational planning objectives to
6 me would relate to the specific reference I just made
7 to, for example, fisheries planning activities where
8 the district throughout the land use guideline process
9 that Mr. Douglas outlined in Panel 1 does establish
10 targets at a broad regional level.

11 Those regional targets are distributed to
12 the district level, the district level examines the
13 resources, the nature of the resource uses and
14 prescribes generalized objectives for the various
15 areas.

16 Q. Okay. I take your point for
17 fisheries. Are there Ministry recreational planning
18 objectives for, as I say, non-consumptive recreational
19 uses such as hiking, canoeing, camping? Are there
20 Ministry recreational planning objectives for those
21 activities?

22 A. Those planning objectives, in my
23 experience, are normally dealt with within the context
24 of the overall parks planning program within that same
25 land use guideline process, that I am not aware of

1 specific camping, for example, objectives at a district
2 level.

3 Q. Fine, thank you. Or hiking or
4 canoeing?

5 A. A lot of the canoeing objectives were
6 very clearly identified through the land use planning
7 process. Normally the high -- or normally potential or
8 existing canoeing values which exist in the district do
9 not -- are protected by recognition of them as values
10 per se in the timber management planning process
11 outside of the context of the parks program.

12 And, again, there has been broad planning
13 initiatives undertaken by the Ministry to deal with
14 recreational planning generally on Crown land which has
15 helped, to some degree, to guide the process, but I am
16 not aware of any specific area where we say we have an
17 objective of maintaining 10 kilometres of canoe routes.

18 Q. Okay, that is fair enough Mr.
19 Straight.

20 MS. SWENARCHUK: Mr. Freidin, can you
21 help us with this: If there are any policy documents
22 on these issues or manuals, can we see them, please,
23 can you indicate whether there are?

24 MR. FREIDIN: Policy documents in
25 relation to...?

1 MS. SWENARCHUK: Recreational planning
2 objectives and we are particularly interested in
3 non-consumptive recreation such as hiking, canoeing,
4 camping.

5 MR. FREIDIN: I can make some enquiries
6 and advise you.

7 MS. SWENARCHUK: Q. All right. Mr.
8 Straight, if you would look at briefly page 40 of the
9 document, at the bottom of the page heading 3.5:
10 Accelerated Regeneration. The first sentence reads:

11 "Regeneration of harvested areas is a
12 requirement for all timber operations in
13 Ontario."

14 And then the sentence continues. Page 40 at the
15 bottom, 3.5.

16 Can you tell me where that requirement is
17 found; is it the policy of the Ministry that
18 regeneration must follow all timber operations in
19 Ontario?

20 MR. STRAIGHT: A. I cannot answer that,
21 I don't know where that policy is found.

22 Q. Thank you. Now, if we look at pages
23 49 and 50 we are looking here at the types of -- at
24 changed cuts that are possibilities for the protection
25 of tourism values. Would you describe -- on page 49,

1 the last paragraph which is a sentence on the
2 right-hand column:

3 "Block cuts may be altered to appear more
4 curvilinear and natural in form."

5 Could either Mr. Straight or Mr. Scott give us an
6 indication of how frequently, in their experience, this
7 kind of cut is done? Is it a common case or an unusual
8 case?

9 A. I am not -- I don't know. Dave, are
10 you better at that?

11 MR. SCOTT: A. In my experience I would
12 not call it a common case because I don't believe from
13 my experience there has been a common need for that.

14 Where we have identified a need, in my
15 experience, we have provided for shaping the block to
16 conform to some sort of scenic vista or making a more
17 natural appearance, yes.

18 Q. And...

19 A. But it is not common because the
20 situation doesn't occur commonly where it is required.

21 Q. In your experience, have tourist
22 operators -- well, how many times can you recall in
23 your experience that tourist operators have made that
24 kind of request?

25 A. I recall on one occasion in Fort

1 Frances when we noticed an improved operating plan,
2 that there could be problems from the scenic viewpoint,
3 that we could accomodate the tourist outfitter and we
4 as a Ministry went to an annual association meeting and
5 marked an area together. And that is really the one
6 example that stands out in my mind right now. Again,
7 it is not a situation that crops up frequently.

8 Q. Okay.

9 MR. STRAIGHT: A. In that same regard, I
10 can indicate a general awareness of other districts
11 having done exactly that same kind of process. Whether
12 or not they came up with a prescription called the
13 continuous leave block system, I can't tell you, but I
14 can tell you that we have worked with both cottage
15 association groups and tourist operators to generate
16 prescriptions that are mutually acceptable.

17 Q. That brings me to my last question on
18 the tourism guidelines and, that is: I don't believe I
19 saw a reference, perhaps one -- I don't believe I saw a
20 reference in the guidelines to cottagers and the
21 protection of scenic values for the purpose of
22 cottages.

23 Now, is there a Ministry policy on that
24 question and, if there is, where can we see it?

25 A. I am not aware of a specific policy

1 other than the degree to which cottagers and their
2 concerns normally occur throughout the general policies
3 or within the general policies and procedures defined
4 within the timber management planning process, in terms
5 of them being notified of impending or potential
6 operations and being asked to become involved in the
7 process. I personally am not aware of others.

8 MS. SWENARCHUK: Perhaps Mr. Freidin
9 could help us with that, if there is a policy with
10 respect to protection of scenic values associated with
11 cottaging?

12 MR. FREIDIN: I think the reference on
13 page 1 of the -- concern about cottaging values are
14 referred to on page 1 of the Tourism Guidelines, the
15 second paragraph. I believe the second and the third
16 paragraph perhaps deal with some of the matters which
17 you have been asking about.

18 MS. SWENARCHUK: So then I take it this
19 is the document that is designed to protect recreation
20 values for all of those users. Is that...

21 MR. FREIDIN: The Ministry's position is
22 I think as indicated by Mr. Straight, that this
23 guideline, although it is called protection of tourism
24 values, it has a procedure for consensus arrival
25 between commercial operators and forest industry.

1 It in fact is applied and is expected to
2 be referred to -- or and can be referred to in order to
3 come up with prescriptions which will protect
4 non-commercial tourism values. Mr. Clark will be able
5 to give specific examples of that in Panel No. 10.

6 MS. SWENARCHUK: And I just want to refer
7 Mr. Straight and the Board then to pages 426 of the
8 document which outline the groups consulted in the
9 development of the guidelines and they appear to be all
10 forest industry or commercial tourism interests.

11 Q. I take it then in actual development
12 of the guidelines, these other groups were not involved
13 in the development?

14 MR. STRAIGHT: A. I believe you are
15 correct in terms of the development. I am personally
16 unaware of whether or not -- and the groups that were
17 asked to review the document, which is perhaps another
18 matter.

19 Q. Agreed. I would like to turn now to
20 consideration of the ESSA Report. My first question
21 though is for Mr. Straight.

22 Mr. Straight, I believe you were
23 involved, were you not, in the makeup of the teams that
24 were to work with ESSA in this study; is that correct?

25 A. Yes.

1 MS. SWENARCHUK: And if we look at --
2 this page is not numbered, Mr. Chairman, but it is in
3 Exhibit 381, at the end of the executive summary there
4 is a page of acknowledgements and then there is a page
5 of participants in the ESSA workshop.

6 Q. Now, Mr. Straight, I think it is fair
7 to inform the Board that the Federation of Ontario
8 Naturalists was requested to be a member of this
9 workshop team; do you recall that?

10 MR. STRAIGHT: A. Yes, I do and I
11 believe the Sierra Club as well were.

12 Q. Yes. I have not found any evidence
13 of that, I am only aware of the Federation of Ontario
14 Naturalists.

15 A. I would have to review the specific
16 correspondence to be certain of that, but I am aware
17 that that particular group were aware of the impending
18 workshops.

19 Q. And the FON declined to participate,
20 and I will distribute the letter that was written to
21 you at that time, on the grounds identified in the
22 letter that -- this was December, 1986 - we were
23 talking about a matter which was sure to become part of
24 this proceeding which was anticipated at the time.

25 The matter was also described as a

1 consensus-building exercise and there was some concern
2 on the part of the Federation that that was not the
3 appropriate time to get involved in that kind of
4 action.

5 This will be, I believe, Exhibit 388, Mr.
6 Chairman.

7 THE CHAIRMAN: 389.

8 MS. SWENARCHUK: 389.

9 ---EXHIBIT NO. 389: Letter dated December, 1986 from
10 the Federation of Ontario
Naturalists.

11 MS. SWENARCHUK: Q. Now, just so that we
12 are clear on the makeup of the team that worked with
13 this question - if the Board will take my numbers for
14 accurate - what we see on this page is a total of 49
15 individuals of which I believe 24 are from MNR; 5 are
16 from ESSA; 2 are academics; 5 are from federal
17 departments; 2 are from the Ministry of the
18 Environment; 2 from the Ministry of Tourism; 2 tourist
19 operators, 2 representatives from NOTOA; 3 from the
20 forest industry; 1 from Hydro; and 1 from OFAH.

21 Now, Mr. Straight, did you have any
22 concern at the time this policy was being -- this study
23 was being initiated that groups who intended to
24 participate in this hearing would feel reluctant to
25 participate in the ESSA project, given the timing of

1 the study, the imminence of this litigation, the
2 limited focus of the study, and the intended
3 presentation of the results as consensus?

4 THE CHAIRMAN: Is it appropriate to
5 characterize the proceeding as litigation, Ms.
6 Swenarchuk?

7 MS. SWENARCHUK: Proceedings before a
8 quasi-judicial tribunal.

9 THE CHAIRMAN: Well, the Board has
10 expressed its views in other decisions that we don't
11 consider proceedings like this to generate winners and
12 losers in the same way that other litigious just
13 proceedings, at least in the civil context do, and what
14 we are mainly concerned with in these proceedings is
15 the protection of the environment.

16 MS. SWENARCHUK: I am satisfied to refer
17 to it as proceedings before a quasi-judicial tribunal.

18 MR. STRAIGHT: I am sorry, Ms.
19 Swenarchuk, I missed a key part of your question.
20 Could you perhaps repeat it?

21 MS. SWENARCHUK: Q. Well, I am concerned
22 with the makeup of the team that worked with ESSA on
23 the project.

24 MR. STRAIGHT: A. Mm-hmm.

25 Q. I have reviewed the makeup. Had the

1 FON participated, it would have been the one
2 conservation group in addition to the anglers and
3 hunters in a group of almost 50, half of whom were MNR
4 people.

5 A. Okay.

6 Q. I think you can understand the
7 reluctance of the group to appear to commit itself to a
8 position which, in front of this Board, might be an
9 uncomfortable position.

10 A. I understand now.

11 Q. And would you agree that the
12 dominance of MNR people in the team raises some
13 question as to the direction of expertise that was
14 exercised.

15 THE CHAIRMAN: Well, hold on a second,
16 Ms. Swenarchuk. I mean, can you have it both ways, in
17 the sense that you - and I don't know Mr. Straight -
18 but perhaps other groups were invited to participate,
19 you decline for some reason of your own not to
20 participate, and you have indicated that is because of
21 the pending proceedings before this Board, and yet you
22 seem to be raising the concerns that, because of your
23 lack of participation, the makeup of the group did not
24 include groups such as yourself.

25 MS. SWENARCHUK: No.

1 THE CHAIRMAN: It wasn't that you were
2 ignored in your case, you were specifically invited.

3 MS. SWENARCHUK: I am simply bringing to
4 the Board's attention the makeup of the team that was
5 involved in the ESSA project and, you know, I am
6 prepared to leave it at that, but when we talk about
7 the number of experts that were involved in it, I think
8 it is relevant to see this must have been part of the
9 dynamic by which the study was done.

10 THE CHAIRMAN: But had you decided to
11 participate, the makeup of the team would have been
12 different; would it not?

13 MS. SWENARCHUK: In our estimate not
14 particularly, we would have been one of 50.

15 THE CHAIRMAN: Well, that certainly
16 doesn't indicate anything about the influence that your
17 group or any other group might have had just because of
18 numbers.

19 MS. SWENARCHUK: I think the concern
20 also, Mr. Chairman, was that this was conveyed to the
21 Federation as being a consensus-building exercise and,
22 as I say, we were concerned about being committed to
23 something that we might not consider be totally in
24 agreement with before this Board.

25 THE CHAIRMAN: But just taking that one

1 step further, suppose you had joined, suppose you had
2 taken part and suppose you hadn't reached the
3 consensus, suppose that the report came in with a
4 majority of the parties in agreement, for example, you
5 could easily have stated your position that your group
6 was not in agreement and indicated the areas that you
7 weren't in agreement with; could you not?

8 MS. SWENARCHUK: I think that given
9 resources available and the imminence of this case at
10 the time, it was expected to begin earlier than it did,
11 as you recall, there was concern about a
12 consensus-building exercise.

13 Perhaps my first question will go to Mr.
14 McNamee on that point.

15 Q. At page 212 to 214 of the effects
16 monitoring for resource protection guidelines in
17 Ontario, we see a summary of resource values.

18 DR. McNAMEE: A. Yes.

19 Q. Can you inform us, Dr. McNamee, did
20 every participant in the study agree with each one of
21 these hypotheses evaluations?

22 A. Where there was lack of complete
23 agreement, it was shown on this chart under the --
24 excuse me, heading 6 where there was -- whether or not
25 the group felt that there was -- that in the absence of

1 timber management guidelines being used, a significant
2 effect would indeed occur.

3 Where there was lack of complete
4 agreement on that, that is indicated under that chart
5 as unsatisfactory. For example, under hypothesis of
6 effect No. 1, the fact that under that there the entry
7 is yes and then uncertain. That is evidence that there
8 was not absolute agreement amongst everybody.

9 Q. Okay. That is helpful, thank you.

10 Now, you will agree with me, will you
11 not, Dr. McNamee, this exercise was concerned not with
12 monitoring of environmental effects broadly described,
13 but with monitoring of the effects of implementation of
14 specific guidelines in three specific limited areas?

15 A. Yes.

16 Q. Now, if you look at the Backgrounder,
17 Exhibit 380, in the second paragraph we see:

18 "The monitoring program will serve to
19 evaluate..."

20 Page 3 of the Backgrounder, Exhibit 380, second
21 paragraph:

22 "The monitoring program will serve to
23 evaluate the physical, biological,
24 and socio-economic justification for the
25 current timber management guidelines."

1 Would you agree with me that the emphasis in the study
2 was on physical and biological impacts?

3 A. Not completely. If you define -- if
4 you look at the effects that were addressed in terms of
5 the effects that timber management actions might have
6 on the tourism values, I think those effects deal with
7 economic and social impacts. For example, if you look
8 at the March, '88 Report...

9 Q. This is 381?

10 A. Sorry?

11 Q. This is Exhibit 381?

12 A. Okay, thank you.

13 Q. Right. I think I understand what you
14 mean to that extent.

15 A. Yes, yes.

16 Q. The tourism questions,
17 socio-economics was considered?

18 A. Yes, yes.

19 Q. Again, on page 14 of the Backgrounder
20 with regard to species conversion, the report indicates
21 that:

22 "All stands are assumed to regenerate to
23 a fully stocked condition with the same
24 overstorey species as in the original
25 stand according to the growth rules laid

1 out in Plonski."

2 Would you agree with me that if in reality stands do
3 not regenerate in that way to a fully stocked condition
4 as laid out in Plonski, that the actual impacts of the
5 guidelines will differ from what the model predicts?

6 A. Yes, I would agree with that. I also
7 would like to add that Section 3 of this report - of
8 which the piece that we are speaking of is in - is a
9 brief description of the model which we built and, as I
10 stated yesterday afternoon, once the model had been
11 built and used to look at some behaviours such as what
12 might happen if we don't -- if there is no timber
13 management at all and things of that sort, we took a
14 step back from that--

15 Q. Mm-hmm.

16 A. --and derived the hypothesis of
17 effects and once those were -- excuse me, once we had
18 reached that stage, then the actual working model which
19 we had built and which is described in Section 3 was
20 not used at all.

21 Q. Okay. At page 216 of Exhibit 381, we
22 see a discussion of the uncertainties - it is in the
23 second paragraph on that page - the uncertainties
24 regarding the relationship between animal habitat --
25 wildlife habitat protection and actual population

1 protection and the need for studies at both levels.

2 A. I am sorry, I am not sure where you
3 are on the page.

4 Q. Page 216.

5 A. Yes.

6 Q. The first complete paragraph.

7 A. Right.

8 Q. Half-way down on the right-hand side
9 the sentence begins:

10 "To say that the guidelines are designed
11 to protect the resource value, i.e., the
12 population, from timber management
13 activities implies that the relationship
14 between habitat and levels of the
15 different resource values are known.
16 Based on the discussions of the April
17 workshop documented in Chapter 3 it is
18 obvious that this relationship is not
19 well understood."

20 Was it the consensus of the members of the team that
21 this relationship is not well understood?

22 A. Of the team?

23 Q. Of the 50 people who participated.

24 A. By and large I would have to say yes.

25 Q. And I realize you worked in

1 sub-groups. That consensus included, did it, MNR
2 wildlife people?

3 A. Yes.

4 Q. Now, the actual studies that you
5 propose in this monitoring program are rather briefly
6 described.

7 MS. SWENARCHUK: Are we going to have a
8 more detailed description of these research programs in
9 future panels or not, Mr. Freidin?

10 DR. McNAMEE: I must...

11 MR. FREIDIN: Hold it. I think Dr.
12 McNamee can answer that question.

13 DR. McNAMEE: Yes. Those were not
14 proposed by the ESSA group, those are the product of
15 everybody who was involved and I believe that will be a
16 part of evidence Panel 16.

17 MS. SWENARCHUK: In that case, I think I
18 will save my remaining questions for Panel 16.

19 Thank you.

20 THE CHAIRMAN: Thank you, Ms. Swenarchuk.

21 MR. STRAIGHT: Mr. Chairman, could I
22 perhaps just take a minute and address the first issue
23 with regard to the ESSA workshops that Ms. Swenarchuk
24 raised and in terms of the representation.

25 There was one fundamental concept there

1 that perhaps should be understood to everybody which
2 will facilitate. It is along the line of not trying to
3 produce winners or losers in this exercise.

4 The main thrust of those -- I was
5 entrusted with the job of trying to -- I was entrusted
6 of the job of working towards generating a monitoring
7 program which I will be reporting on in 16. One of the
8 tasks in dealing with that was to ensure that we had as
9 clear an understanding in a technical sense of those
10 resource values, technical in the sense of fisheries
11 biology, limnology, water quality, technical in the
12 sense of moose biology, forestry; and technical in
13 terms of what happened to the economics of the tourist
14 industry.

15 And those specific individuals were
16 selected for their expertise, not necessarily -- not
17 because they represented any particular group, but
18 because they happened to reflect the degree and the
19 range of scientific technical information that we
20 required to draw upon to reach those kinds of
21 conclusions.

22 We are aware of individuals, for example,
23 in the FON who have expressed concerns on issues as
24 water quality and certainly some of their membership
25 they have that kind of technical expertise and, to that

1 degree, we invited it to be available to partake in
2 this particular process.

3 In some fields, for example, if you look
4 at moose biology, we are hard pressed to find
5 internationally much better expertise than exists in
6 our own organization, in MNR, and those people we
7 called upon from the federal government and, to the
8 degree that those people were available, we would have
9 sought them if we could have for the process.

10 For example, one university profesor from
11 the University of New Brunswick was specifically
12 brought into the process because of the expertise he
13 sought. And so that was the specific nature of the
14 process by which we sought participants in those
15 particular workshop sessions.

16 I just wanted to take the opportunity to
17 ensure that was clear.

18 THE CHAIRMAN: Thank you.

19 MS. SWENARCHUK: Those are my questions.

20 THE CHAIRMAN: Do you have any questions
21 relating to that?

22 MS. SWENARCHUK: I will save them for the
23 next panel.

24 THE CHAIRMAN: Okay. Thank you. We are
25 just going to canvass what we have left?

1 Mr. Williams, we have you to hear from
2 and you indicated between half a day and one day; is
3 that correct?

4 MR. WILLIAMS: That is correct, Mr.
5 Chairman.

6 THE CHAIRMAN: And, Mr. Campbell, we also
7 have you for your usual three hours to half a day?

8 MR. CAMPBELL: That is correct. I intend
9 to deal with the various interrogatories which we wish
10 to file and then Ms. Seaborn will be conducting the
11 balance of the cross-examination.

12 * I would like to make a suggestion at this
13 time, I guess just as a matter of convenience. As I
14 read the schedule, Mr. Hunter -- we have been asked to
15 precede Mr. Hunter, if possible, so that Mr. Hunter can
16 go Tuesday.

17 Given our timing and given what's ahead,
18 I wondered whether it would be possible to complete Mr.
19 Williams tomorrow and do the scoping session at the
20 balance of the day and then give all of us who have a
21 variety of matters to contend with including
22 interrogatories, filings and a whole host of
23 preparations of all of these things that we were
24 saving, as well as other matters, two clear working
25 days and then we will pick up on Monday with our

1 cross-examinations which we will undertake to complete
2 on Monday.

3 THE CHAIRMAN: Well, there is that
4 possibility. The other possibility is to complete Mr.
5 Williams tomorrow and Mr. Colborne on Thursday morning
6 along with the scoping session and then adjourn until
7 Tuesday afternoon to pick up Mr. Hunter and then
8 proceed on Wednesday with Panel 9 because we understand
9 that Mr. Armson - well, and to complete your
10 re-examination and then pick up on Wednesday with Panel
11 9 because that's the day when Mr. Armson is available.

12 Is that not correct, Mr. Freidin?

13 MR. FREIDIN: Yes, he will be available
14 but he won't be coming up on the morning plane. He is
15 coming in from out of Toronto, so he won't be up here
16 until -- we will probably start around noon or our one
17 o'clock timetable.

18 MR. CAMPBELL: Mr. Chairman, I think it
19 is accurate to state that you missed us out entirely.
20 While we do try to be efficient, I am not sure that we
21 can be that efficient.

22 It seems to us that - I had forgotten, to
23 be honest, Mr. Colborne - it seems to me if we allowed
24 Mr. Williams, Mr. Colborne and the scoping session this
25 week, given what I understand of Mr. Hunter's estimate,

1 if we came up Monday evening and started first thing
2 Tuesday morning, we would certainly finish both of us
3 on Tuesday without question.

4 MR. MARTEL: Mr. Armson isn't here until
5 Wednesday afternoon.

6 THE CHAIRMAN: Well, I think in that case
7 what we could do is to...

8 MR. CAMPBELL: We could do re-examination
9 on Wednesday morning.

10 THE CHAIRMAN: Yes. I think what we
11 could do is, if we came in Tuesday for the afternoon,
12 like Tuesday morning to start in the afternoon, we
13 should be able to complete both Mr. Hunter as well as
14 probably yourself and re-examination between then and
15 Wednesday afternoon which is the earliest you can start
16 with Mr. Armson. Would that not be correct?

17 How long are you going to be in
18 re-examination, do you think?

19 MR. FREIDIN: I am not too sure how many
20 minutes it will take, Mr. Chairman. I don't at this
21 stage anticipate being very long.

22 THE CHAIRMAN: You are talking about in
23 minutes instead of hours?

24 MR. FREIDIN: Yes. I would just perhaps
25 indicate that for some reason it always seems that I

1 spend some time dealing with the cross-examination of
2 the Ministry of the Environment on re-examination and I
3 would certainly prefer a scheduling which would allow
4 me to perhaps consider the cross-examination of the
5 Ministry of the Environment over an evening as opposed
6 to trying to scramble...

7 THE CHAIRMAN: Well, why wouldn't you
8 have that Tuesday night.

9 MR. FREIDIN: Well, I understood that
10 they may not go on Tuesday, that it was going to be Mr.
11 Hunter.

12 THE CHAIRMAN: No, but I am suggesting
13 that we could cover perhaps on Tuesday both Mr. Hunter
14 and Mr. Campbell.

15 MR. FREIDIN: Well, I am quite content to
16 try and do that. I am just saying that --

17 THE CHAIRMAN: Because we could sit later
18 on Tuesday, I think.

19 MR. FREIDIN: Cutting into my
20 re-examination time, Mr. Chairman.

21 THE CHAIRMAN: Well, we wouldn't cut into
22 it that much because I would think if Mr. Hunter is
23 going to be something like two or three hours and Mr.
24 Campbell and Ms. Seaborn are only going to be the same,
25 that we could probably finish up by seven o'clock at

1 the latest on Tuesday.

2 You take time off for dinner; don't you,
3 Mr. Freidin?

4 MR. FREIDIN: No, sir.

5 THE CHAIRMAN: You don't. Well, maybe
6 Tuesday you will skip dinner and go right into your
7 deliberations.

8 MR. CAMPBELL: Mr. Chairman, if I could
9 deal with the matter of interrogatories, I propose the
10 Thursday for interrogatories. I don't think it will
11 actually involve the panel very much, but I would like
12 to go through the various ones. If I could deal with
13 that on Thursday as a convenience I would appreciate it
14 and I wouldn't need to come back up with Ms. Seaborn.

15 THE CHAIRMAN: Well, on Thursday we can
16 go to about two o'clock at the outside. We could also
17 start a little bit earlier on Thursday so that we would
18 complete the scoping session and probably be able to
19 deal with your interrogatories on that day as well.

20 MR. CAMPBELL: Well then, could we plan
21 on that schedule then, Mr. Chairman, because we do have
22 interrogatory filing dates and we'll know tomorrow as
23 to...

24 THE CHAIRMAN: Does anyone see any major
25 problem with that proposed schedule.

1 MR. FREIDIN: What's the suggestion now;
2 where are we?

3 THE CHAIRMAN: All right. The suggestion
4 is: Is that we would adjourn Thursday at the usual
5 time and recommence on Tuesday afternoon at 1:00 p.m.
6 at which time we would be dealing with Mr. Hunter,
7 followed by your re-examination -- sorry, followed by
8 Ms. Seaborn and then you would have the night to
9 prepare for your re-examination for the following
10 morning which will take less than one hour, as you have
11 indicated, probably.

12 MR. FREIDIN: I will wait to see how this
13 goes.

14 THE CHAIRMAN: And then we can start in
15 with Panel 9 as soon as Mr. Armson arrives.

16 MR. CAMPBELL: Thank you very much, Mr.
17 Chairman, it is quite helpful to be able to plan time a
18 little better.

19 THE CHAIRMAN: I think that should work.
20 Mr. Williams?

21 MR. WILLIAMS: Mr. Chairman, as far as
22 our cross-examination tomorrow, I ask the Board and
23 witnesses to have Exhibit 4 available.

24 THE CHAIRMAN: Exhibit 4?

25 MR. WILLIAMS: Yes.

1 THE CHAIRMAN: Will you be filing any
2 exhibits of your own, and any great number of exhibits
3 that we should be doing it tonight?

4 MR. WILLIAMS: Not on this panel, Mr.
5 Chairman.

6 THE CHAIRMAN: Very well.

7 MS. SWENARCHUK: Mr. Chairman, does that
8 still mean adjourning next Thursday?

9 THE CHAIRMAN: Yes. We will not be able
10 to change next week's schedule to sit Friday. That was
11 one of the weeks that we would be adjourning normally
12 on Thursday.

13 MS. SWENARCHUK: Okay.

14 MR. FREIDIN: We don't sit on next
15 Thursday the 9th; is that correct?

16 THE CHAIRMAN: No, we will sit until two
17 o'clock but we are not sitting next Friday.

18 MR. FREIDIN: Oh, okay.

19 THE CHAIRMAN: All right. In view of the
20 hour that we are rising tonight, I think we will start
21 tomorrow at 9:00 p.m. -- a.m., rather. Sorry, I wish
22 9:00 p.m.

23 Thank you.

24 ---Whereupon the hearing adjourned at 4:45 p.m., to be
25 reconvened on Wednesday, February 1st, 1989,
commencing at 9:00 a.m.

